DOCUMENT RESUME

ED 464 542 HE 034 855

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TITLE	The Universal Tuition Tax Credit: Advancing Excellence through Parental Choice and Empowerment. A Sutherland Institute Policy Study.
INSTITUTION	Sutherland Inst., Salt Lake City, UT.
PUB DATE	1999-10-00
NOTE	82p.; Part of the "Focus on Utah" project.
AVAILABLE FROM	Sutherland Institute, 111 E 5600 South, Ste. 202, Salt Lake City, UT 84107 ($3 plus shipping and handling). Tel: 801-281-2081.
PUB TYPE	Reports - Evaluative (142)
EDRS PRICE	MF01/PC04 Plus Postage.
DESCRIPTORS	*Educational Finance; Elementary Secondary Education; Legal Problems; Parent Empowerment; *School Choice; *Tax Credits; *Tuition
IDENTIFIERS	*Utah

ABSTRACT

This study examined the possible benefits to Utah of a Universal Tuition Tax Credit (UTTC), a credit that would make it possible for parents, both low-income and moderate-income, to choose a nonpublic school for their child if they want to. The UTTC would have a positive effect on the per-student revenues available for public school systems as more parents would rely on nonpublic schools. It is projected that over 5 years, the UTTC would save $36 million in local property tax expenditures. The study began by considering why parental choice is an essential ingredient in school change and improvement, suggesting that only where consumer choice and competition exist can there be organizational strategies that allow for successful change and improvement. The study analyzed four potential options for educational improvement and concluded that a tuition tax credit is the best option for significant educational improvement. It is the most likely strategy to provide multiple options and freedom of choice and to most likely to accelerate improvement through incentives. The study also examines constitutional issues based on the U.S. Constitution and Utah's state constitution. The study outlines the UTTC plan for Utah, which would gradually phase in a tax credit for any Utah private school student that could be claimed by any taxpayer, individual or corporate, including a students relatives, friends, or businesses that pay children's tuition. The proposed credit is a per-child credit that increases over years to a maximum of 50% of the average per-student cost of public schooling. An final analysis considers the impact on public school enrollment in Utah and suggests that the credit will benefit the state in periods of slow or rapid economic growth. Four appendixes provide additional information about the UTTC and organizations that support it. (SLD)

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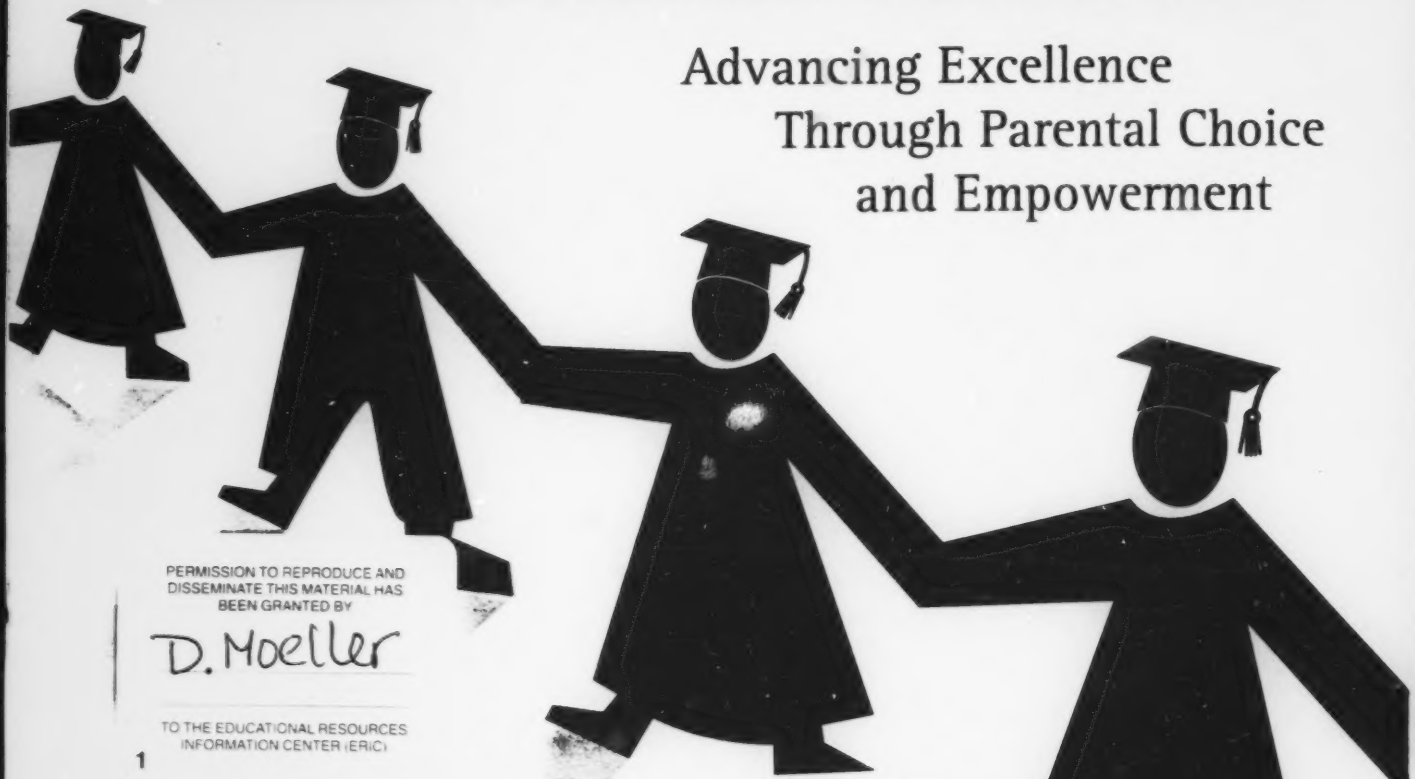
Advancing Excellence Through Parental Choice and Empowerment



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October 1999

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Focus On Utah

Acknowledgements

Project Supervisor	David F. Salisbury, Ph.D	We thank the Mackinac Center for Public Policy in Midland, Michigan, on whose report, *The Universal Tuition Tax Credit: A Proposal to Advance Parental Choice in Education*, this report was modeled. The Mackinac Center originated both the term and the concept behind the "Universal Tuition Tax Credit."
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ES Executive Summary

The Universal Tuition Tax Credit:
Advancing Excellence through Parental Choice and Empowerment

By David F. Salisbury, Ph.D.
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Parental choice in education—whereby parents have the freedom to choose the school their children attend—is seeing explosive growth in popularity and implementation around the United States. Instead of sending their children to an assigned school, parents in America and Utah are increasingly requesting the freedom to send their children to any school of their choice, be it public, private, or parochial.

This study by the Sutherland Institute examines the possible benefits to Utah of a Universal Tuition Tax Credit (UTTC). The UTTC is based on the principle that Utah parents know what type of educational environment is best for their children. It would allow parents (including low- and moderate-income parents) to choose a non-public school for their child if they so desire.

The UTTC would have a positive effect on the per-student revenues available for public school students. As more parents rely on non-public schools for their educational services, the burden on the public system will be *substantially reduced*, leaving a greater amount of money available per student in the public school system. Over the course of five years, the UTTC would save $36 million in local property tax expenditures. Over the course of ten years, this savings increases to $118.5 million, and after 20 years, it reaches $426.4 million.

This study begins by examining why parental choice is an essential ingredient in school change and improvement. In spite of the fact that parents are entrusted to make vital decisions regarding nearly every aspect of their children's lives, most Utah parents are unable to make true choices about education, one of the most important aspects of their children's development. Most children are sent to a government-mandated, government-assigned school.

The foundation of basic economic progress is the ability of individual consumers to choose one good or service over another based on their own preferences and values. Assigning children to schools based on where students live deprives parents of the freedom to apply their own values and priorities to selecting a school, and it deprives schools of valuable marketplace incentives that drive continuous quality improvement.

A number of basic success factors allow for rapid change and improvement in any organization. These include a shared vision and a management style that emphasizes

freedom, incentives, and skills necessary to implement change and improvement. These improvement-inducing strategies almost never exist in government bureaus or monopolies—including public school systems. Only where consumer choice and competition exist do we find companies that embrace organizational strategies that allow for successful change and improvement.

This study analyzes four potential options for educational improvement and concludes that a tuition tax credit is the best option available for significant educational improvement. The tuition tax credit is the most likely educational improvement strategy to provide multiple options and freedom of choice to parents, students, and teachers. It is also most likely to accelerate change and improvement through incentives and to encourage the entrepreneurial spirit and climate required for change and improvement.

This study also examines constitutional issues based on the U.S. Constitution and Utah's state constitution. Vouchers and tax credits invariably face objections that they unconstitutionally establish religion. Recent cases have overwhelmingly upheld school choice programs against arguments that they run afoul of constitutional bars against union of church and state, provided school choice is made available to parents on a religiously neutral basis, and that parents, not the government, have the prerogative to choose which school their sons or daughters attend.

Having covered this background, the study then sets forth the details of the UTTC plan. The UTTC has the following features:

- It gradually phases in a tax credit for tuition paid for any Utah private school student. It is a direct dollar-for-dollar credit against taxes owed, not simply a deduction.

- The tax credit may be claimed by *any* taxpayer—individual or corporate. This includes a student's parents as well as relatives, friends, neighbors, or businesses. A large company, for example, could pay $1,000 tuition for each of 1,000 low-income children and receive a $1,000,000 tax credit.

- It can be implemented using the existing state income tax with its existing mechanisms for tax payments, refunds, enforcement mechanisms, and credits. It would add one more to ten similar tax credits already in place.

- It is a per-child tax credit, allowing the full credit to be applied to each child in a family.

- The tax credit begins at $1,000 per child and, over a number of years, increases to a maximum of 50 percent of the average per-student cost of public schooling.

The Universal Tuition Tax Credit (UTTC) has a positive effect on the revenues available for public school students, including more local money per public school student. These additional revenues could be used to hire more teachers, reduce class sizes, pay public school teachers more, or purchase computers or other educational supplies.

Key benefits of the UTTC:

- It vastly expands parental choice in education in Utah, bringing with it the dynamics of consumer choice and a competitive educational marketplace. Results will include *marked* increases in educational quality, educational opportunity, and parental involvement.
- It overcomes the defects of traditional tax credits by allowing both parents and non-parents to obtain tax relief when they support a student at a private school.
- It causes *no negative effect* on the revenues of municipal governments such as cities, counties, or towns.
- It has a *positive effect on the revenues available for public school students*, including more local money per public school student. These additional revenues could be used to hire more teachers, reduce class sizes, pay public school teachers more, or purchase computers or other educational supplies.

The UTTC produces significant savings to the state. Since the UTTC will make private schools more affordable, more parents will be financially able to transfer their children from public schools to private schools. With the maximum credit limited to fifty percent of the average per-student cost of public schooling, every student who transfers to a private school will produce a net savings to the state.

The final portions of the study present a comprehensive analysis of the impact of the UTTC on public and private school enrollments. No matter how fast demand for private schools grows, state taxes will continue to be unaffected until the tax credit reaches the maximum of $2,401, when public schools will begin to keep surplus dollars. Local property taxes for education will immediately receive savings, which will dramatically increase over time and may be used to better fund public education and/or cut property taxes. Under either a slow growth or fast growth scenario, all Utah students will benefit directly. This is a win-win scenario for parents, children, teachers, taxpayers, and private and public schools.

The report includes detailed guidelines and analysis, including:

- Predicted effects (price elasticity of demand and supply and prediction of consumer behavior) of the UTTC on state and local taxpayers (Chapter V);
- Answers to commonly asked questions regarding the UTTC (Appendix I);
- History, trends, and attitudes toward school choice (Appendix II).

I. The Importance of School Choice in Education

In spite of the fact that parents are entrusted to make these and other vital decisions for their children, most Utah parents (unless they happen to be wealthy) are unable to make a real choice about where their children are educated.

The Promise of Parental Choice in Education

Parental choice in education—whereby parents have the freedom to choose the school their children attend—is seeing explosive growth in popularity and implementation around the United States. Instead of sending their children to an assigned school, parents in America and Utah are increasingly seeking the freedom to send their children to any school of their choice, be it public, private, or parochial.

Poll results show that Utah voters support the idea of providing parents with the option of sending their children to the school of their choice—either public, private or parochial—rather than only to the school to which they are assigned.[1] National surveys have shown that between 60 and 70 percent of the population either strongly supports or somewhat supports the idea of parental choice among public, private, or parochial schools.[2] Phi Delta Kappa, an association of educators, places general public support for school choice closer to 51 percent; this number jumps to 56 percent among parents with children in public schools.[3]

These poll results should not be too surprising. After all, parents are—or should be—primarily responsible for the upbringing and education of their children. Every day, parents decide what food their children will eat and what foods they will avoid. Parents choose doctors and dentists for their children. As their children grow older, parents help them decide what high school courses to take and what clubs and associations to join. As young people approach high school graduation, parents help them select a college and offer counsel regarding future education and career goals.

In spite of the fact that parents are entrusted to make these and other vital decisions for their children, most Utah parents (unless they happen to be wealthy) are unable to make a real choice about where their children are educated. For 180 days of the year, their children are sent to an elementary or secondary school to which they have been assigned by the government. Many parents feel frustrated by the lack of choice over this most important aspect of their children's development and are calling for reform in state policies to give them choice in education.

1 R.T. Nielson poll of Utah voters, February 15, 1997. Seventy-nine percent supported or strongly supported the idea of providing parents with the option of sending their children to the school of their chioce—either public, private, or parochial—rather than only to the school to which they were assigned. When asked if they supported the idea of allowing parents to use the tax dollars allotted for their child's education in the form of a scholarship to attend the school of their choice, 61 percent responded favorably. Voters were distributed throughout the state and 54 percent had school-age children at home. The poll had a margin of error of five percent.

2 *A National Survey of Americans' Attitudes Toward Education and School Reform*, The Center for Education Reform, Washington, D.C. 1996.

3 See Lowell C. Rose and Alec M. Gallup, "The 30th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Toward the Public Schools," *Phi Delta Kappan*, September 1998, p. 44.

Because of the increasing support for parental choice in education, more and more states are proposing and implementing legislation that gives back to parents the major decision-making power in this vital area. America is turning away from collective decision-making about education and toward more individualized decision-making on this important issue.

Choice Is Breaking Out All Over

A review of parental choice programs throughout the United States indicates that school choice legislation was passed in five new states in 1998, bringing the total number of states that allow parents to choose among public schools to 34, in addition to the District of Columbia.[4] Throughout the country, families are also taking advantage of charter schools, voucher systems, tuition tax credit plans, and other innovations that provide for public and private school choice alternatives to traditional assignment to a tax-supported neighborhood school. Wisconsin and Ohio have instituted new choice options for some of their urban parents. Florida recently passed the first statewide voucher plan for parents of students in poorly performing public schools. Vermont continues to offer private and public school choice options for many of its rural citizens under a program started in 1869.[5] In 1997 both Arizona and Minnesota approved educational tax credits. Arizona now allows a tax credit of up to $500 for donations to organizations that provide scholarships to private school students. The Minnesota plan allows families with incomes of $33,500 or less to take a $1,000 per-child ($2,000 maximum per family) tax credit for tutoring, textbooks, transportation, computers, and instructional materials. Families with incomes of more than $33,500 receive a tax deduction (up to $2,500) for private school tuition as well as the expenses covered under the tax credit.

In Utah, parents now have the option of sending their children to any public school, not just the school located in their neighborhood. This legislation allows parents to enroll their children in any public school within the state as long as they can provide transportation. However, the parents who wish to participate must choose a school that is not overcrowded and submit an application to the local school district by a specified deadline. Also, the law is increasingly circumvented by administrative rules that allow either the sending or receiving school to turn down the parent's request.

4 See Nina Shokraii Rees and Sarah E. Youssef, *School Choice: What's Happening in the States 1999*, Washington D.C., Heritage Foundation, 1999.

5 In Vermont, local school boards in certain towns will pay tuition at a public or approved private ("independent") secondary school, in or out of the state. The school boards are required to pay an amount equivalent to the average tuition charge of the state's union high school districts, with the parent paying the remaining amount. See John McClaughry, "Educational Choice in Vermont." Concord, VT: Ethan Allen Institute. Available at the Ethan Allen Institute's web site, http://www.ethanallen.org/edchoice.htm

Why Parental Choice Works

Parents and Students as Consumers

In their daily lives as consumers, people make decisions about the products they utilize and the services they pay for. As the companies providing these various products and services increase over the years, consumers are presented with more choices. Competition causes quality to increase and firms to operate more efficiently as companies compete with each other for customers. The growth of the advertising industry on Madison Avenue can be attributed to the increased number of choices and the need to measure and compare them. Choice is the engine for change and improvement in a free society. The foundation of basic economic theory is the ability of individual consumers to choose one good or service over another based on their own preferences and values. Parents prefer good food for their family over poor food. As a result of economic freedom, they have the right to choose better food, even if it means that better restaurants and grocery stores thrive while others close. Parents prefer better automobiles to poorer ones. They have the right to choose the cars they want, even if it means that some auto-makers expand production and others either improve their products or shut down.

Choice is the engine for change and improvement in a free society.

Parents as the Engine of Choice

Why has change and improvement in education not kept pace with change in the market place? The lack of freedom to choose among options partly explains it. Historically, parents once had the primary role in managing the education of their children. Eventually, however, small, neighborhood schools under the direction and control of parents were combined and aggregated into large organizations under centralized control and direction from state and district levels. Methods of teaching and administering became systematized, flexibility became limited, and teacher innovation became bureaucratized. This gradual change took educational freedom and control out of the hands of parents as well as teachers, and educational choices and results have suffered in the process.

Research demonstrates that the more choice parents are given regarding the education of their children, the better their children do in school (see "What is the Effect of School Choice on Academic Achievement?" in Appendix II of this report). Freedom in education should be allowed to accomplish what freedom in business and industry has accomplished.

The idea that competition will enhance the diversity and quality of the entire educational system is a basic tenet of school choice. As parents choose schools for their children, the schools they leave behind are forced to improve in order to compete. Engaged in competition, these schools provide the energy for their own regeneration, thus improving the entire educational system.

The market approach that provides the philosophical underpinnings for the concept of school choice acknowledges the truth about children as students: that they have different educational needs and learning styles, and that they have a right to seek out a school that will best match their needs and aptitudes. The market system can offer diversity in the type of education offered to students as well as improved quality of schools in both the public and private sectors.

A New Day of Wonder for Education

Imagine a school that adjusts to a child's needs instead of the child adjusting to the needs of the school. In such a school, character development is a byproduct and virtue is practiced by all. Innate talents could be identified early and continually supported. The school curriculum could develop the whole person, including occupational skills, producing young renaissance men and women. Picture each child having his own computer for schoolwork and every parent receiving daily updates on his or her child's progress. Think of those children achieving three to four grade-levels of progress in just two years with no more than their current efforts. Envision their teachers getting higher salaries with more satisfying work.

Everything mentioned above can be done today without increasing education funding. Knowledge about child growth and development is available, instruments to accurately profile the learning needs of individual children exist, and techniques for faster learning have been identified. The tools and technology to boost learning are either available, under development, or on the drawing board. What is lacking is the freedom of choice and the incentive to make positive change happen. These crucial ingredients of progress are simply not present in today's monopolistic public school systems.

The tools and technology to boost learning are either available, under development, or on the drawing board. What is lacking is the freedom of choice and the incentive to make positive change happen.

The Ingredients of Change and Improvement

Recent studies in the area of organizational change have identified elements that help organizations accelerate change and improvement and make them sustainable.[6] Change that can be implemented and sustained over the long term brings progress. These ingredients come out of research on leading-edge industries that have to compete globally.

Twelve of the factors found to support rapid change and improvement are shown in Figure 1 on the next page. The left column lists the factors that support change and improvement, the right column lists their counterparts that lead to stagnation. These criteria can be applied not just to businesses but to any organization, including schools. They can accurately predict the sorts of organizations that will excel in their missions and those that will not.

6 For examples of research on implementing and accelerating change, see Daryl R. Conner, *Managing at the Speed of Change: How Resilient Managers Succeed and Prosper Where Others Fail*, Villard Books, 1993; Peter M. Senge, *The Fifth Discipline: The Art and Practice of the Learning Organization*, Doubleday, October 1994; and David A. Nadler, *Champions of Change: How CEOs and Their Companies Are Mastering the Skills of Radical Change*, Jossey-Bass, 1998.

Figure 1. Twelve Dimensions of Successful Change and Improvement

	SUCCESS		STAGNATION
1.	Employees and managers have a shared vision and shared expectation for change and improvement.	1.	Managers impose a vision on employees or have no vision, and participants have little desire for change or improvement.
2.	Management emphasizes freedom, utilizing meaningful information, innovation, and voluntary acceptance and initiative.	2.	Management emphasizes control, utilizing imposed directives and explanations.
3.	The organization creatively searches for relevant new truth and knowledge.	3.	The organization does not actively search for new relevant knowledge.
4.	The organization is client-centered and information-driven.	4.	The organization is structure-centered and management-driven.
5.	Choice and accountability are present at all levels, and employee growth is considered essential for organizational growth.	5.	Choices are made at the top, accountability is imposed at the bottom, and management is concerned with tapping current skills rather than employee growth.
6.	The organization is action-based, embracing agile attitudes to promote progress.	6.	The organization is order-based, embracing traditional structures to preserve stability.
7.	Communication paths and networks are open.	7.	Communication follows lines of authority.
8.	The organization uses councils and broad-based teamwork to promote warm, productive, and interdependent relationships.	8.	The organization allows position to determine responsibility, fostering cold, dependent relationships.
9.	The organization taps internal motivation and initiative via new ideas, and gives employees freedom to innovate within fixed boundaries.	9.	The organization imposes external motivation through punishments and control-type rewards, including promotions.
10.	Responsibility is fixed and accountability is shared.	10.	Responsibility is shared and accountability is fixed.
11.	All people, processes, and technology are aligned within the organization and work in harmony.	11.	Components within the organization operate separately and have little or no alignment design.
12.	Planning, communication, information support, and teamwork are integrated together.	12.	Segments of the organization function separately with little or no integration.

The 12 success factors identified in column 1 of Figure 1 allow rapid change and improvement in any organization. These improvement-inducing strategies almost never exist in government bureaus or monopolies–including public school systems. Only where consumer choice and competition exist do we find companies that embrace organizational strategies that allow for successful change and improvement.

Obstacles to Change and Improvement in Public Education

There are at least six obstacles that block improvement in the public schools. These are:

1. Change and improvement require an entirely different kind of leadership style than that found in most public schools. Public school environments are often authoritarian rather than free and collaborative.[7] Authoritarian environments limit choice, take away incentives, and promote protective reactions in place of purposeful activity. Government-run institutions are authoritarian by nature, and public schools are no exception. Change requires an entrepreneurial spirit and courage, but those that try it in public education encounter immense opposition and undue restrictions.

2. Change requires a new vision that must be shared and supported by all stakeholders. Bureaucracies impose a vision downward from central planners to the people in the schools. That kind of vision seldom triggers the hope and enthusiasm of the field-level people. Usually, they are even left out of the planning for implementation–a fatal mistake for change.

3. Change does not occur without incentives. Other than personal pride, there are few incentives for attracting and keeping good teachers and administrators. The lack of incentives explains why education attracts a small proportion of the most able university students. Good students want the freedom to make an impact. For the most part, public education does not provide it.

4. Operating climates in education are less than optimal. In many cases, they are the opposite of everything we now know is required for rapid change and improvement. The educational establishment tends to treat "what is" as more important than "what ought to be" or "what could be." Communication flows one way and parallels the organizational chart. Initiative and creativity are stifled by bureaucratic rules, imposed techniques, and inflexible structures.

Other than personal pride, there are few incentives for attracting and keeping good teachers and administrators.

7 O.J. Harvey's research at the University of Colorado found that 90 percent of district superintendents used an authoritarian management style. For an example of one such study, see O.J. Harvey, "Beliefs and Behavior: Some Implications for Education," University of Colorado at Boulder, March 1970.

5. The principle of accountability, which has worked to improve business, is not sufficiently present in public education. Productive organizations link accountability to personal freedom. Teachers should not be held accountable for decisions they do not make. Good accountability systems are accompanied more by rewards than punishments.

6. The skills to implement change and improvement do not exist within public education. They are not taught to administrators and could not be applied if they were, given the current bureaucratic structure and tendencies. The skills come somewhat naturally to entrepreneurs, but where in education are entrepreneurs encouraged? Where innovators do surface, there is little incentive to expand or perpetuate their improvements.

II. Evaluating School Improvement Options

Which of the many proposals for school reform would result in real improvement? One way to answer this question is to evaluate the various proposals for school reform against the criteria for success identified above. In this section, we discuss four approaches to school improvement. Two options fall under improving what we now have in public education and two others are competitive approaches. The potential options for educational improvement include:

I. Public school reform, including more funding;

II. Choice among public schools, including magnet schools and charter schools;

III. A tax-funded voucher system to be used by parents; and

IV. Tuition tax credits for all taxpayers for education expenses.

A summary of the examination of each option is provided below along with a comparative table. Six questions, based upon the change and improvement criteria identified in the previous section, guided the review of each option.

Which option is most likely to:

1. Provide multiple options and the freedom to choose for parents, students, and teachers?

2. Enable parents to manage the educational development of their children?

3. Accelerate educational improvement through incentives (teacher, parent, and student)?

4. Encourage the entrepreneurial spirit and climate required for change and improvement?

5. Protect against abuses of concentrated power and money?

6. Get maximum value from each education dollar?

Option I: Educational Improvement through Public School Reform

For the past few decades, educational improvement has focused on change within the existing public school system. Federally sponsored regional education laboratories and improvement dissemination centers have supplied educators with volumes of research on how they might improve results. Hundreds of books and dozens of

university centers target educational improvement. However, hundreds of volumes of educational improvement research have gathered dust without being implemented.

Instead, legislators, business leaders, parents, and others discontented with the quality of the public school system are typically met with promises of improvement tied to requests for more money. This "more money" claim and "lack of it" blame continue in spite of a plethora of valid improvement ideas that do not require money.

Historically, public school improvement efforts have been slow and the results disappointing in spite of rapid increases in spending. Even the states that spend twice as much per pupil as Utah show little differential–including states that have much smaller class sizes.[1]

Part of the reason that educational improvement is slow and minimal within the public school system is that few educational initiatives have had to stand the reality check of competition. The business world has shown that incentive-driven change and improvement does not cost more money, it saves money. Improved products and services provided at the same or lower cost are the result of having to meet the demands of competition. As mentioned previously, incentive-driven change is rare in the current public school system because of its monopolistic nature.

Perhaps the most notable example of an ineffective reform effort in Utah public schools is the Centennial Schools program. The Centennial Schools program was designed to, "Assess students on an on-going basis using authentic performance-based methods. Also use multiple means of assessment such as projects, interviews, demonstrations, and documented competencies with portfolio. Use standardized tests solely to evaluate the statewide system."[2] The means to accomplish educational excellence would be different in each Centennial School; site-based management teams, composed of 50 percent parents, 50 percent teachers, and the principal as a tie breaker, would be used to harness the creative energy of school-by-school autonomy.

The State Office of Education contracted three evaluations of Centennial Schools.[3] In the first evaluation, teachers and principals in participating schools were interviewed, the consensus being that they felt they were progressing toward their goals, although in over half of the schools parental participation was limited to only a few parents. Only 12 percent of the parents "felt like equal partners with the school staff in making educational decisions." The second evaluation was similar, with optimistic statements expressed but "very little substantive, in-depth outcome data." A majority of

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1 For an examination of the relationship between spending and achievement see the "Report Card on American Education: A State-by-State Analysis 1976-1998," The American Legislative Exchange Council, Washington, D.C., December 1998.

2 Foreword, *Utah Centennial Schools: Profiles of Participating Schools 1996-97*. A copy of the state's strategic plan in effect from 1992 to 1998 can be obtained from the Utah State Library.

3 These evaluations can be found on the web site of the State Office of Education: http://www.usoe.k12.ut.us/programs/centennial/progeval.htm

the funding was "invested in inservice training...to prepare teachers to use new approaches." The third and final evaluation rated parent participation as "high," but gave no numbers on any goals or objectives supposedly being reached.

The Centennial Schools example is representative of most public school reform efforts. It does not empower any group—parents, students, or teachers—not previously empowered.

One might expect that "Centennial School" promotions would encourage students to study harder, have better attitudes in class, have better school spirit, or be more excited about the future value of their education. Any or all of these should tend to improve test scores. However, a review of those test scores over a period of five years found that there was no statistical change in test scores.[4] The appropriation of over $16 million since 1993 for Centennial Schools has had no noticeable effect, either positive or negative. One of the likely reasons for the lack of improvement is the lack of power on the part of the parents on the site-based management teams to implement any real changes.

The Centennial Schools example is representative of most public school reform efforts. It does not empower any group—parents, students, or teachers—not previously empowered. It does not have quantifiable objectives to measure the success or failure of the program, so it therefore does not improve accountability. Likewise, it does not provide incentives to those who perform well. Lastly, it does not alter the basic structure of the educational system in any way. Public school reform efforts stay within the power boundaries set up by established educational organizations, and that usually limits any possibility of real change.

How does reform within the public school system measure up to the criteria outlined above? It does not provide parents, students, and teachers the freedom to choose among multiple options. For the most part, it does not enable parents to manage the educational development of their children. The only incentive to teachers, parents, and students to accelerate educational improvement is personal pride, which varies a great deal between individuals. By the same token, it does not encourage entrepreneurial spirit. It facilitates abuses of concentrated power and money rather than protecting against them, and, like most government programs, it does not get maximum value from each education dollar.

Because of the obstacles and inherent limitations present in a public school monopoly, Option I, improving public education as it exists today, is not likely to succeed. Little improvements can and will occur here and there as attention is focused on key problems such as low reading scores, but that will not bring the large improvements that are needed, deserved, and possible.

4 The Sutherland Institute, *Utah Schools: An In-Depth Look* (Salt Lake City: The Sutherland Institute, 1999) p. 53-58.

Option II: Choice within Public School Systems

Three trends are causing public schools to take a look at offering choice within their systems. One is the growing pressure for improvement. Another is an increase in the number of parental demands for choices. The third, and perhaps the most influential, is the specter of vouchers or tuition tax credits for attendance at private schools. Many school districts have organized magnet schools and allow students living anywhere in the district to attend those schools. Others, including Utah, allow parents to choose among public schools (subject to space availability). Eight states now allow students to cross district boundaries. Twenty-two states have public school choice within some or all districts.

School choice within the public school system does offer some professional incentives and does allow parents a choice. However, the choice is among schools that are fairly similar or operate within similar restrictions and limitations. Again, the incentives are limited and the latitude to experiment and innovate is slender. All such schools still operate under the authority of centralized power, fixed budgets, etc.

Where the pressure for public school alternatives is strong, charter schools have often been authorized. Charter schools are theoretically allowed more freedom than regular public schools or magnet schools. Twenty-seven states (including Utah) currently allow charter schools. While charter schools have more freedom than regular public schools, they still operate under constraints imposed by government. It remains to be seen how effective such schools can be with partial freedom. It will hopefully help. Charter schools do offer parents an alternative to regular public schools. Unfortunately, the number of charter schools to choose from is often severely restricted, as is their freedom to innovate. Because the number and flexibility of charter schools will always be limited, they must be viewed historically in the same category as other demonstration schools: they will not significantly improve the system as a whole.

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School choice within the public school system does not bring in adequate incentives nor remove the blockages to reform. While Option II does provide parents limited choices and gives them a small degree of control over their child's education, the other four criteria for change and improvement are greatly lacking.

Option III: School Tuition Vouchers

The third option examined in this study has received a lot of attention in recent years. It has also generated a lot of controversy that somewhat clouds the issue of educational improvement. Under this option, an education voucher of a specified value is offered by the state to the parents of every school-age child. The parents then are free to redeem the voucher at the school of their choice. The schools turn the vouchers in to the state government for reimbursement. It is simple in concept but somewhat complex in its operation.

A tuition voucher system could certainly act as a vehicle of school improvement because it meets most of the six criteria outlined for the comparison of options. It places parents in control and provides choice among both public and private options. Vouchers would provide the opportunity for incentives and initiatives for improvement, thereby providing room for the entrepreneurial spirit. If the voucher were less than the state currently spends educating a child, the taxpayers and public education would benefit to the degree they are allowed to keep all or part of the difference.

However, a voucher system would require an elaborate system of centralized accounting and record keeping–for both the family and the school. Another complexity is the issue of government vouchers being used by religious institutions–the church and state issue. While recent court rulings have ruled that parental choice does not constitute direct religious funding, the political issue still remains. Another complicating factor is that few dollars flow from government without strings. The freedom of both educators and parents could hypothetically be curtailed to some extent. Private schools in Utah fear those potential strings, which is one reason that most seem to have little interest in accepting or promoting government vouchers.

The tuition voucher option falls down in this area. Money still flows down from a centralized pot, leaving the power to regulate centralized as well. In addition, vouchers limit the maximum impact of each dollar because they are distributed through the state government. When money flows from taxpayers through government and back again, efficiencies are always lost.

Because Option III fails in these two areas, it cannot be recommended as the best option for improving education.

Option IV: Tuition Tax Credits

The fourth option examined in this study is the idea of tuition tax credits. Tuition tax credits differ from tuition vouchers in two significant ways. First, parents use their own money to pay tuition at a private school for their child–they do not receive a subsidy from the government in the form of a voucher. Second, there is no flow of money to government and back again. That takes state public education officials out of the picture and leaves parents in control of their child's education.

Under tax credits, parents forego asking government for a share of the money earmarked to educate their child. In its place, parents ask to send less money to government. If the tax credit is less than public schools spend per student, the balance in the money saved remains in the public school system. Taxpayers and public educators all benefit.

One disadvantage of tuition tax credits is that parents do not recoup their tuition money for some time after they have spent it. It is the same as waiting for a tax refund. Also, some alternative mechanism would have to be put in place for parents

who pay no taxes. The "universal" tuition tax credit explained in this report provides a solution to these problems by allowing any taxpayer (including businesses and charitable foundations) to participate in the tax credit program by providing scholarships for low-income students to attend private schools.

The tuition tax credit option overcomes the political, centralized control and money flow problems of the voucher option. It meets all six of the comparison criteria drawn from the ingredients of rapid change and improvement literature. Control and management is returned to parents, the conditions of change and improvement are encouraged, and educational dollars are maximized.

The chief danger presented by Option IV rests with the size of the tax credit authorized. If not sufficient, the vitality of the private education market will be lacking. Similarly, if the tax credit is not sufficient to cover all or most of the cost of educating a child in private school, then some lower-income parents may not be able to exercise the option. An insufficient credit amount leaves the issue of equal and universal access unresolved, which is the problem with the current public school system. Wealthy parents can buy the option of school choice, poor parents cannot.

Fortunately, the cost of private education nationally is only one half of that in public schools. Public education spends close to seven thousand dollars per child per year while private school tuition averages just over three thousand dollars.[5] A tax credit high enough to allow universal access to a school of choice would still leave tax money on the table to be used as the legislature saw fit.

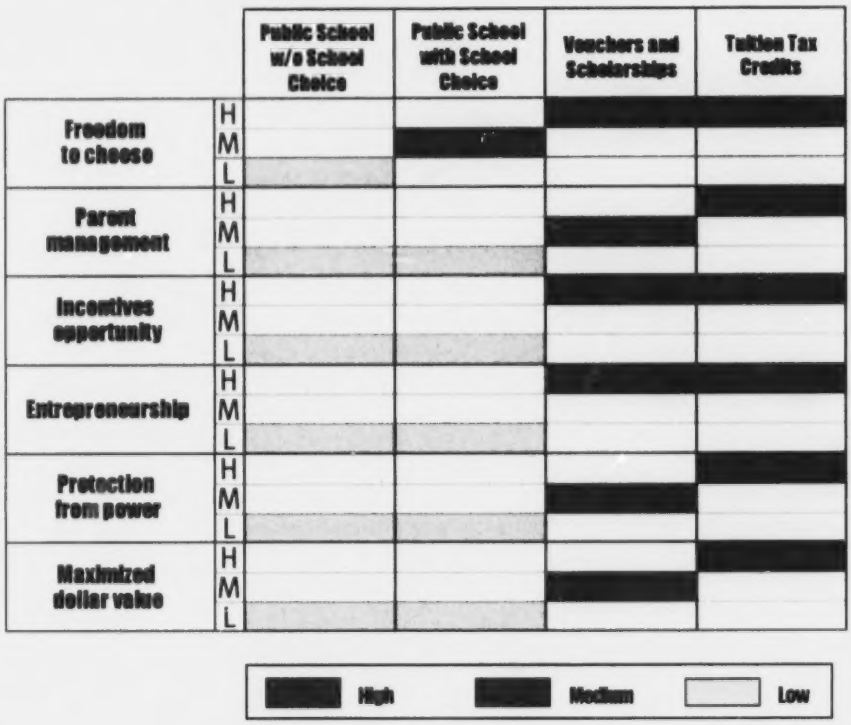
If the tax credit is not sufficient to cover all or most of the cost of educating a child in private school, then some lower-income parents may not be able to exercise the option.

5 According to a 1996 Cato Institute study, the average tuition for all private schools, elementary and secondary, is $3,116 - less than half of the average cost per pupil in the public schools, $6,857. See David Boaz and R. Morris Barrett, *What Would a School Voucher Buy? The Real Cost of Private Schools* (Washington, D.C.: Cato Institute) March 1996.

Comparison of School Improvement Options

The following chart compares the four options on the six criteria for comparison:

Figure 1. Comparison of School Improvement Options Rated by Rapid Change and Improvement Variables



Tuition tax credits have the advantage over vouchers when it comes to parent management.

As can be seen in the chart, open school choice options score higher than public school choice options on all six comparison factors. Both result in taxpayer savings because the voucher or tax credit doesn't have to match the spending for public schools. However, much faster improvement can be expected if the amount of the tax credit or voucher remains high.

Tuition tax credits have the advantage over vouchers when it comes to parent management. With tuition tax credits, parents simply pay less education taxes and then use their own money to pay tuition at the school of their choice. Private schools that may fear the increased government regulation that would come with vouchers would have less hesitation accepting additional students from parents who are receiving a tax credit.

Implementing a tuition tax credit is the option most likely to engender educational excellence in Utah schools. Due to its advantages over other educational improvement options, it is the one most recommended and examined in the remainder of this report.

Summary and Conclusions

1. The factory model borrowed from the industrial age has run its course in education and must be replaced with new delivery models if educational excellence is to be attained.

2. The checks, balances, and incentives in public schools are inherently insufficient to combat school mediocrity. The current public school system does not allow the natural incentives and motives of parents, teachers, and students to flourish because choices and options are limited. Hence, significant improvement cannot be expected.

3. Without a free-market climate and market incentives, new delivery models, new tools, and new strategies targeted to educational improvement will not emerge.

4. The use of private providers through parental choice would improve the quality of education for all students and save considerable sums of money.

5. Of the four options discussed, a tuition tax credit is the best option available for significant educational improvement.

Without a free-market climate and market incentives, new delivery models, new tools, and new strategies targeted to educational improvement will not emerge.

III. The Constitutionality of School Choice Plans for Utah Parents and Students

The Groundswell for School Choice

In 1952, a federal commission warned that regulatory conditions attached to federal aid to education would result in uniformity and mediocrity in American schools.[1] In 1983, the National Commission on Excellence in Education, chaired by then-University of Utah President David Gardner, published a report entitled *A Nation at Risk: The Imperative for Educational Reform*, which concluded with the ominous verdict that "the educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a nation and a people."[2] In 1998, the American Legislative Exchange Council released yet another study on education in America, which found that the mediocrity predicted in 1952 had essentially gone unabated, despite an unprecedented 51 percent increase in inflation-adjusted per-pupil spending over the past 20 years.[3] Scholar Thomas Sowell has similarly observed that "resources have had little or nothing to do with educational quality," noting as an example that the physical plant and per-pupil expenditures in the District of Columbia are among the highest in the nation, but the students' test scores are among the lowest.[4]

A review of the underlying economics of public school monopolies (as has been done in chapter 1) makes it easy to see why increased funding—without some viable alternative—stymies meaningful reform in education. Monopolies in general are hostile to consumers, gouging them with higher prices while delivering lower-quality services. Tax-financed monopolies can be even worse since they have no accountability. A dissatisfied consumer cannot realistically opt out of the system. Thus insulated, government-financed monopolies tend to promulgate regulations in the name of consumer protection while often turning a deaf ear to individual consumers. They tend to focus inward in an effort to satisfy upper-echelon supervisors rather than outward in an effort to satisfy consumers.[5]

Given the general dissatisfaction with the academic performance of public schools during the past 20 years, many states are exploring private education alternatives—a movement known as "school choice." Two of the more prominent examples that respectively epitomize school choice are the voucher and tuition tax credit approaches. Generally speaking, a "voucher plan" means a system whereby the state gives the parents of a school-age child a voucher or written authorization that can be used for payment, in whole or in part, of tuition in any public or private school that meets

1 Edward Gafney, "Private Education and the Road Ahead", 9 *J. Soc. Pol. & Econ. Stud.* 111 (1983).

2 National Commission on Excellence in Education, *A Nation at Risk: The Imperative for Educational Reform*, 5 (1983).

3 American Legislative Exchange Council, *1998 Report Card on American Education*, foreward (1998).

4 Thomas Sowell, "Race, Culture, and Equality," speech delivered June 18, 1998.

5 Manuel Klausner, "Tuition Tax Credits and the Case Against Government Schools," 9 *J. Soc. Pol. & Econ. Stud.* 85, 90 (1983).

minimum criteria. An example is the 1995 Milwaukee Parental Choice Program, a voucher alternative to the public education monopoly by which Wisconsin paid the educational costs of low-income Milwaukee parents who desired to send their children to private schools.[6]

A tuition tax credit or deduction, on the other hand, is not an appropriation of public money, as are vouchers, but work the same way as any other deduction or credit in a state or federal tax code. For instance, in 1997 Arizona amended its tax laws to allow a state tax credit of up to $500 for those who donate to "school tuition organizations."[7]

Recent cases have overwhelmingly upheld school choice programs against arguments that they run afoul of constitutional bars against union of church and state...

A Constitutional Analysis of School Choice Programs

Because religiously affiliated schools are among viable alternatives to public school monopolies, state-implemented school choice programs have invariably faced objections that they unconstitutionally establish religion. Yet under a now well-developed body of case law, these objections will likely be the last gasps of the Titanic. Recent cases have overwhelmingly upheld school choice programs against arguments that they run afoul of constitutional bars against union of church and state, provided that school choice is made available to parents on a religiously neutral basis, and that the parents, not the government, have the prerogative to choose which school their sons or daughters attend.

Under the United States Constitution

The First Amendment to the United States Constitution provides in pertinent part that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."[8] Though the First Amendment speaks only of congressional restraints, its interdictions simultaneously apply to state and local government action. As evident from its text, the First Amendment addresses religion in two ways: the free exercise clause guarantees religious liberty, and the establishment clause forbids the state from advancing a particular religion or religions. The United States Supreme Court has consistently recognized the tension between these two clauses, since an overly zealous safeguarding of rights guaranteed by one could result in an impairment of those protected by the other. As a result, the Court has attempted to chart a neutral course between the two clauses, drawing a flexible line in recognition that a "rigidity could well defeat the basic purpose of [these clauses], which is to ensure that no religion be sponsored or favored, none commanded, and none inhibited." (*Walz v. Tax Commission*, 1970)[9]

6 Wis. Stat. § 119.23 (1995-96).

7 A.R.S. §43-1089.

8 U.S. Const. amend. I.

9 397 U.S. 664, 669 (1970).

In 1971, the Supreme Court developed a three-part test from a long line of cases to determine whether a government program violates the establishment clause. Under this test, a government program satisfies the establishment clause if it (1) has a secular purpose, (2) neither advances nor inhibits religion; and (3) does not foster excessive entanglements with religion. The Court has cautioned these tests must not be viewed "in any limiting sense of that term, but rather as guidelines with which to identify instances in which the objectives of the religion clauses have been impaired." (*Lemon v. Kurtzman*, 1971)[10]

Using *Lemon*'s analytical framework, the Court in 1973 held in *Committee for Public Education v. Nyquist* (1973)[11] that a New York statute, which extended tuition tax credits only to the parents of children attending private schools, was invalid under the establishment clause. However, the Court reserved the question whether a "bona fide tax deduction or credit" made "generally available" to the parents of public and private schools was constitutional.[12] "General availability" thus emerged as critically important in determining whether state aid was impermissibly targeted to religious schools or permissibly available to all citizens, who themselves chose private religious schools for their children.

Against this backdrop, the Court in 1983 decided *Mueller v. Allen* (1983),[13] which upheld a Minnesota statute that allowed parents to claim state income tax deductions for tuition and other educational expenses. Running through the *Lemon* three-point analysis, *Mueller* concluded: (1) there is a strong secular purpose in assuring the continued health of private schools; (2) the primary effect of Minnesota's tuition tax deduction is not to advance religion since all private citizens could claim tax relief under a facially neutral act; and (3) the state's oversight is insubstantial since it did not differ significantly from any other deduction or government appropriations approved in the Court's previous decisions.[14]

Mueller marked a critical shift in the Court's analysis of school-aid cases. From the late 1940s until the 1970s, the Court seemed to stress what later would become the first *Lemon* prong of analysis—whether the aid at issue had a secular purpose, or, in other words, its content. In the 1970s and 1980s, the Court's analysis shifted, moving toward the second prong and asking whether even secular aid might nonetheless impermissibly "advance religion." In the mid-1980s, starting with *Mueller* and con-

10 403 U.S. 602, 678 (1971).

11 413 U.S. 756 (1973).

12 *Ibid.* at 782, n.38.

13 463 U.S. 388 (1983).

14 *Mueller* explained "in *Board of Education v. Allen*, 392 US 236, we approved state loans of textbooks to all schoolchildren; although we disapproved, in *Meek v. Pittenger*, 421 US 229 (1975), and *Wolman v. Walter*, 433 US 229 (1997), direct loans of instruction materials to sectarian schools, we do not find those cases controlling. First, they involved assistance provided to schools themselves, rather than tax benefits directed to individual parents...Moreover, we think that state assistance for the rental of calculators...ice skates, tennis shoes, and the like, scarcely poses the type of danger against which the Establishment Clause was intended to prevent." *Mueller* at n. 10.

tinuing to date, the primary inquiry remains *Lemon's* second prong, but the focus is whether disbursement of government aid is neutral.[15]

Since 1983, the decisive question is not what religious institutions receive, but how they receive it. The establishment clause does not bar a state from (a) providing taxpayer funds on a neutral basis to individuals who freely choose to spend the money on attending religious schools, or (b) in the alternative, not taking taxpayers' money in the first instance, and giving them a deduction or credit for money they pay in private school tuition.

The Court's recent jurisprudence unmistakably reinforces this trend. Building upon *Mueller*, the Court in 1986 unanimously held that the establishment clause did not bar Washington from issuing a vocational grant to a blind person who intended to use it to pay tuition at a Christian college and become a pastor. The saving feature of the state program was the private choice of the state's grantee. In the Court's words, "state programs that are wholly neutral in offering educational assistance to a class defined without reference to religion do not violate the second part of the *Lemon* test, because any aid to religion results from the private choices of individual beneficiaries." (*Witters v. Wash. Dept. of Services for the Blind*, 1986)[16]

Following the same rationale, the Court seven years later in 1993 unanimously upheld public funding of an interpreter for a deaf student at a Catholic school. Again the Court stressed that "according parents freedom to select a school of their choice, the statute ensured that a government-paid interpreter will be present in a sectarian school only as a result of the private decisions of individual parents." (*Zorbest vs. Catalina Foothills School District*, 1993)[17]

Two years later in 1995, the Court held the establishment clause did not prohibit the University of Virginia from funding a religiously affiliated student group because school funds were made generally available to all groups. Provided the criteria for conferring the benefit was religious neutrality, the students' choice to use public funds, even for religion-related purposes, was constitutionally permissible (*Rosenberger v. University of Virginia*, 1995).[18] And in 1997, the Court upheld a federal program that provided remedial education on a neutral basis to low-income special-needs children in religious schools. In expressly overruling previous decisions that would have led to a contrary result, the Court reiterated that the critical principle under the establishment clause remains government neutrality (*Agostini v. Felton*, 1997).[19] The aid must "not result in governmental indoctrination; define its recipi-

15 There are two exceptions to this observation. In *Grand Rapids School District v. Ball*, 473 U.S. 373 (1985), the Court held public school teachers may not supplement the education of religious-school students with classes on secular subjects; and in *Aguilar v. Felton*, 473 U.S. 402 (1985), the Court held that public-school teachers may not provide remedial education to Title I religious-school students. However, the Court in *Agostini v. Felton* infra overruled *Ball* and *Aguilar*.

16 474 U.S. 481, 490-91 (1986).

17 509 U.S. 1, 10 (1993).

18 515 U.S. 819 (1995).

19 117 S. Ct. 1997 (1997).

ents by reference to religion; or create an excessive entanglement."[20] The core establishment clause principle is that government aid must be "allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis."[21]

...state supreme courts have interpreted the federal Constitution and their own state constitutions to uphold voucher programs and tuition tax credits against federal and state establishment clause challenges.

In reliance on these United States Supreme Court cases, state supreme courts have interpreted the federal Constitution and their own state constitutions to uphold voucher programs and tuition tax credits against federal and state establishment clause challenges.

Vouchers

In 1998 the Wisconsin Supreme Court upheld the amended Milwaukee Parental Choice Program (MPCP), by which the state paid the educational costs of low-income Milwaukee parents who wanted to send their children to private schools, including sectarian schools (*Jackson v. Wisconsin*, 1998).[22] Under the MPCP, the state paid participating schools directly for the benefit of students whose parents restrictively endorsed the check to the private school for its use. From its analysis of the foregoing United States Supreme Court cases, the Wisconsin Supreme Court concluded, "The amended MPCP, in conjunction with existing state educational programs, gives participating parents the choice to send their children to a neighborhood public school, a different public school within the district, a specialized public school, a private nonsectarian school or a private sectarian school. As a result, the amended program is in no way skewed towards religion." Drawing a parallel to other government services, such as police and fire protection, the Court reasoned, "A student qualifies for benefits under the amended MPCP not because he or she is a Catholic, a Jew, a Moslem, or an atheist; it is because he or she is from a poor family and is a student in the embattled Milwaukee Public Schools."[23]

The same result followed under Wisconsin's state constitutional counterpart to the federal establishment clause called the "benefits clause," which provides that no state money may be "drawn from the treasury for the benefit of religious societies, or religious or theological seminaries."[24] Like similar clauses in other state constitutions, the Wisconsin provision precluding state establishment of religion was intended "to serve the same dual purpose [as the federal constitution] of prohibiting the establishment of religion and protecting the free exercise of religion."[25] Although not sub-

20 *Ibid.* at 2016.

21 *Ibid.* at 2014.

22 578 N.W.2d 602 (Wisc. 1998).

23 *Ibid.* at 617.

24 Wis. Const. art. I, § 8.

25 *Jackson* at 619.

sumed by the First Amendment, the Wisconsin Supreme Court interpreted its "benefits clause" "in light of the United States Supreme Court cases interpreting the Establishment Clause of the First Amendment."[26]

Tax Credits

In 1999, the Arizona Supreme Court upheld the constitutionality of the state tuition tax credit program, by which those who donated to a "school tuition organization"[27] were allowed a tax credit up to $500 (*Kotterman v. Killian*, 1999).[28] Running through the familiar three-prong *Lemon* test, the Arizona Supreme Court, like its Wisconsin counterpart, once again emphasized the means by which funds reach sectarian schools was the result of numerous private choices. The Court also stressed an additional point that made Arizona's school choice program even less subject to constitutional objection–tax credits are not appropriations of public money. To argue otherwise, said the Court, "plainly ignores the many other credits and deductions available in Arizona ... This tax credit may provide incentive to donate, but there is no arm-twisting here. Those who do not wish to support the school tuition program are not obligated to do so. They are free to take advantage of a variety of other tax benefits, or none at all."[29]

The Court's point is unassailable. Churches have historically enjoyed an exemption from property and income taxes. If exemptions (deductions and credits) are tantamount to subsidies, granting churches an exemption from taxation would likely run afoul of the establishment clause because the government cannot directly subsidize religion. Yet the reason exemptions are constitutional is that the United States Supreme Court has long recognized that subsidies and exemptions are qualitatively different. By definition, a subsidy is the redistribution of government funds that were initially taken from someone else who generated the income. For an exemption, on the other hand, the government simply refrains from taking what does not belong to it in the first place.[30] To make the point by analogy, no one would argue that a thief subsidizes those from whom he does not steal. Accordingly, because exemptions are not subsidies, governments may choose to exempt churches from taxation, and citizens may take deductions for their contributions to churches without constitutional difficulty.

The Court also stressed an additional point that made Arizona's school choice program even less subject to constitutional objection—tax credits are not appropriations of public money.

The Arizona Supreme Court reinforced this point in concluding the state's tuition tax credit did not violate various provisions of the Arizona Constitution that precluded

26 *Ibid.*

27 A.R.S. § 43-1089(1997). "School tuition organization" means a charitable organization in Arizona exempt from federal taxation under § 501(c)(3) of the internal revenue code, and that allocates at least 90 percent of its annual revenue for educational scholarships and tuition grants.

28 288 Ariz. Adv. Rep. 5 (Jan. 26, 1999).

29 *Ibid.* at 22.

30 Walz, supra, at 690-691.

the appropriation of public funds to support religious establishments. "For us to agree that a tax credit constitutes public money would require a finding that state ownership springs into existence at the point where taxable income is first determined. The tax on that amount would then instantly become public money. We believe that such a conclusion is both artificial and premature."[31] Based upon a similar analysis of the other "religion clauses" in the Arizona Constitution, the Court concluded "the tuition tax credit is a neutral adjustment mechanism for equalizing tax burdens and encouraging educational expenditures. ... [It is] a valid exercise of legislative prerogative."[32]

For us to agree that a tax credit constitutes public money would require a finding that state ownership springs into existence at the point where taxable income is first determined.

Under the Utah Constitution

The Utah Constitution includes two restrictions on church-state relations. Article I, section 4 of the Utah Constitution states in part that "the State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; ... [Further,] There shall be no union of church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment."[33] Article 10, section 13 similarly provides that state government "shall make [no] appropriation to aid in the support of any school, seminary, academy, college, university or other institution, controlled in whole, or in part by any church, sect or denomination whatever."[34]

The Utah Supreme Court has yet to decide whether vouchers and/or tax credits are constitutional under these state constitutional provisions. If called upon to decide these issues, the Court has already declined to follow *Lemon's* analytical framework, noting that "federal rulings set the floor for federal constitutional protections," not the Utah Constitution, which is less "cryptic" and, in some instances, unique (*Society of Separationists, Inc. v. Whitehead*, 1993).[35] Nonetheless, the Court's interpretation of Utah's constitutional provisions on state-church relations clearly adopt the same neutrality concepts that inhere in federal constitutional law. For instance, in *Separationists* the Court held that "public expenditures or use of property that provide any 'direct' [not indirect] benefit to religion run afoul of the 'no public money or property' ban of article I, section 4."[36] This concept rests on "governmental neutrality," which the Court found to underlie the Utah Constitution's religion and conscience clauses.[37] "When the state is neutral, any benefit flowing to religious worship, exercise, or instruction can be fairly characterized as indirect because the ben-

31 *Kotterman* at 40.

32 *Ibid.* at 61.

33 Utah Const. art. I, § 4.

34 Utah Const. art X, § 13.

35 870 P.2d 916, 930 (Utah 1993).

36 *Ibid.* at 936.

37 *Ibid.* at 937.

efit flows to all those who are beneficiaries of the use of government money or property..."[38] In turn, satisfaction of constitutional neutrality depends upon two "requirements": (1) the benefits must be provided "on a nondiscriminatory basis"; and (2) "the public money must be easily accessible to all." Satisfaction of these tests means all individuals must be eligible for the benefit which is disbursed in a non-discriminatory manner.[39] While perhaps rephrased to embrace the intent of Utah's founding fathers, these concepts are identical to those found in recent United States Supreme Court and other state supreme court decisions on the same subject matter.

Applying these criteria, the Utah Supreme Court concluded in *Separationists* that the Salt Lake City Council's practice of permitting opening prayer during council meetings did not offend the Utah Constitution. "The expenditures [permitting prayer] were not for the religious exercise itself, but for the meeting and that portion of the agenda that consists of generic opening thoughts, some of which may include prayers. Furthermore, ... the City Council [had not] favored particular religions or religion in general in scheduling participants."[40] Under the same concepts of neutrality, either the Wisconsin voucher program or the Arizona tuition tax credit program if adopted in Utah should pass state constitutional muster.

Under the same concepts of neutrality, either the Wisconsin voucher program or the Arizona tuition tax credit program if adopted in Utah should pass state constitutional muster.

The Equal Protection Issue

The Fourteenth Amendment to the United States Constitution provides in part that "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The equal protection guarantee of the Fourteenth Amendment, by its own terms, applies to state and local governments, even though the same analysis has been applied to federal action under the due process clause of the Fifth Amendment. The United States Supreme Court has explained that "[t]he purpose of the equal protection clause is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution." (*Sunday Lake Iron Co. v. Township of Wakefield*, 1918)[41] The equal protection clause guarantees that government will treat similarly situated individuals in a similar manner.

The constitutional guarantee of equal protection does not prevent government from drawing lines or making classifications, but it does prevent arbitrary or irrational classifications, that is, classifications that burden what the United States Supreme Court has identified as "suspect" (e.g. race, national origin, alienage), or "fundamen-

38 *Ibid.*

39 *Ibid.*

40 *Ibid.* at 938.

41 247 U.S. 350, 352-352 (1918).

tal rights" (e.g. marriage, procreation, travel), absent a compelling reason for making a distinction. Given this framework of analysis, most government classifications are constitutional because they relate to a legitimate governmental purpose and make reasonable or rational distinctions between individuals. For example, a zoning ordinance, which effectively classifies and discriminates among property owners, will nonetheless be upheld against constitutional challenge if there is a rational basis for making a distinction. On the other hand, a classification that burdens a "suspect" class, say zoning laws motivated by racial concerns, are most likely unconstitutional, unless the state can demonstrate a compelling reason (such as redress of identifiable discrimination) to make racial distinctions.[42]

The Utah Supreme Court has explained that "the principles and concepts embodied in the federal equal protection clause and the state uniform operation of laws provision [Utah Const. art. 1, § 24] are substantially similar." Under the Utah Constitution, an "examination into the reasonableness of economic legislation is at least as vigorous as that required by the federal constitution, and probably more so." (*Amax Magnesium Corp. v. Utah State Tax Comm'n*, 1990)[43]

School choice programs generally classify the population into two broad categories–those who receive vouchers or tax credits, and those who do not. Initially, therefore, the question arises whether these classifications violate federal or state equal protection clauses.[44] Can the government confer vouchers upon or extend tax credits to some and not to others? In short, can the government limit its largesse?

The logical and necessary answer to these questions is that government must be permitted to limit its financial outlays, since government resources are finite. Restating the obvious as a matter of law, the United States Supreme Court has recognized that "a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a state may not accomplish such a purpose by invidious distinctions between classes or its citizens." (*Shapiro v. Thompson*, 1969).[45] Given this general rule, government distinctions in the disbursement of benefits are constitutional provided there is rational basis for making a distinction and the criteria by which funds are disbursed do not include "suspect criteria" or impact "fundamental rights." Utah could, accordingly, limit the number of vouchers available, or give more vouchers to public school students rather than private school students, provided race, religion, sex, and other such categories, are not distribution criteria.

42 See generally Rex E. Lee, *A Lawyer Looks at the Constitution* 146-155 (1981); see also *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977).

43 796 P.2d 1256, 1257, (quoting *Blue Cross & Blue Shield v. State*, 779 P.2d 634 (Utah 1989)).

44 The Utah Constitution has no state "equal protection" clause as such. Article IV section 1 of the Utah Constitution guarantees equal civil, political and religious rights and privileges from abridgment "on account of sex." By its terms, this clause prevents arbitrary sexual classifications and thus would not apply to the voucher proposal which makes no such distinctions.

45 394 U.S. 618 (1969).

There are no reported decisions that invalidate vouchers or tax credits as a violation of equal protection. There are no persuasive equal protection arguments against them since Utah has broad discretion in meeting its obligation to educate its children.[46] But if one were one to concoct such an argument, it would likely be that "education" is a fundamental right, and that disbursement of vouchers or credits to some, but not all, denies educational choice to those denied. This argument is superficially analogous to *Shapiro v. Thompson* (1968) in which the United States Supreme Court held that restricting welfare benefits to state residents adversely and unconstitutionally impacted a "fundamental right" to travel. Obviously, the critical differences between *Shapiro* and any similar challenge to a voucher or tax credit system are that: (1) "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution," (*San Antonio School District v. Rodriguez*, 1973);[47] and (2) education, if deemed a fundamental right under the Utah Constitution,[48] is not denied because someone must attend public school. The Utah Constitution appears to guarantee an education in general, not a particular quality of education. Were that not so, the present system of public education clearly jeopardizes constitutional rights more so than almost any conceivable voucher or tax credit system.

Separationists endorses the concept that the legislature may choose to stimulate education by providing funds to parents, who, in turn, choose to spend those funds on private parochial schools.

The Free School Issue

Another make-weight argument bantered about is that, because the State has a constitutional mandate to provide education under the Utah Constitution,[49] it is forbidden to fund anything but government schools. There is nothing in Utah case law to support this argument. Indeed, the cases cut the other direction. As noted above, *Separationists* endorses the concept that the legislature may choose to stimulate education by providing funds to parents, who, in turn, choose to spend those funds on private parochial schools. As noted below, *Logan City School Dist.* holds that the Utah Constitution guarantees equal access to public education, not exclusivity of public education. Neither does the Utah Constitution prescribe a particular funding mechanism for public education, only that there shall be a uniform school fund.

These residue arguments are deliberately obfuscatory and premised upon a fundamental misunderstanding of the Utah Constitution. As the Utah Supreme Court clar-

46 The requirement for a uniform system of public schools is met where the regular curriculum of the school is open to all eligible children. *Starkey v. Bd. of Ed.*, 381 P.2d 718 (Utah 1963).

47 411 U.S. 1, 35 (1973).

48 Utah Const. art. III § 4 provides that "The Legislature shall make laws for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and be free from sectarian control." This section does not apply to financial matters and does not mean that schools must be free. It simply means that all children must have equal rights and opportunity to attend the grade or class of school for which they are suited by previous training or development. *Logan City School Dist. V. Kowallis*, 94 Utah 342, 77 P.2d 348 (1938).

49 Utah Const. art. X, § 1 directs the legislature to establish a public school which "shall be open to all children of the state." Utah Const. art. X, § 5 establishes a "permanent State School Fund" which consists of revenues from specified sources.

ified in *University of Utah v. Board of Exmrs.* (1956),[50] the Utah Constitution is not one of grant (as is the United States Constitution), but one of limitation. This means that whatever is not proscribed is permitted. Because the legislature is not restricted expressly or by necessary implication from indirect funding of private alternatives to public schools, there is no legal restraint stopping it from doing just that.

The Utah Constitution is not one of grant (as is the United States Constitution), but one of limitation. This means that whatever is not proscribed is permitted.

Conclusion

The United States Supreme Court has never modified or reversed its decision in *Mueller v. Allen*. Moreover, in November 1998, the Court declined to review the Wisconsin Supreme Court's decision in *Jackson v. Benson*. As a result, the school choice movement has picked up steam, and has prompted other state legislatures and state supreme courts to follow *Jackson*'s lead.[51] *Jackson* and *Mueller* thus stand as the most probable analysis the United States Supreme Court would undertake to uphold school choice against a federal constitutional challenge if again confronted with the issues. Given the analysis and holding in *Separationists*, the Utah Supreme Court would likely agree that the Utah Constitution sanctions the same outcome.

Addendum

Since this chapter was initially written, two additional state supreme court cases addressing the church-state issues raised by school choice programs have been decided.

On May 27, 1999, the Ohio Supreme Court upheld a Cleveland Scholarship Program, commonly known as the School Voucher Program, against a federal establishment clause challenge, and a challenge under parallel provisions of the Ohio Constitution (*Simmons-Harris v. Goff*, 1999).[52] However, the Court invalidated the program on technical provisions of the Ohio Constitution that require legislative bills to contain only a single subject, thereby opening the door for legislative enactment of the same program once the procedural prerequisites were satisfied. As to the merits of school choice, Justice Paul Pfeiffer wrote for the majority that "[w]hatever link between government and religion is created by the School Choice Voucher Program is indirect, depending only on the 'genuinely independent and private choices' of individual parents, who act for themselves and their children, not for the government."[53]

On June 11, 1999, the Vermont Supreme Court upheld a program "authorizing school districts to provide high school education to their students by paying tuition for non-public schools selected by their parents" against a federal establishment clause challenge (*Chittenden Town School District v. Vermont Dep't of Education*, 1999).[54]

50 295 P.2d 348 (Utah 1956).

51 119 S.Ct. 466 (1998).

52 No. 97-1117, slip op. (Ohio S. Ct. May 27, 1999).

53 *Ibid.* at 6.

54 No. 97-275, slip op. (Vt. S. Ct. June 11, 1999).

However, the Court also concluded the program violated the "public support" provision of the Vermont constitution "when it reimburses tuition for a sectarian school ... in the absence of adequate safeguards against the use of such funds for religious worship."[55] Again, the invalidation of the Vermont voucher program appears easily curable. The Vermont legislature could either: (1) adopt a tuition tax credit program, rather than a tuition reimbursement program, similar to that Arizona adopted; or (2) provide "adequate safeguards" against the use of public funds for religious worship at sectarian schools. The former solution is probably the cleanest since, as explained earlier, an exemption or credit does not distribute public money, but simply allows a taxpayer to keep his or her own money. The second solution is likewise possible. The Court concludes that "[s]chools to which the tuition is paid by the district can use some or most of it to fund the costs of religious education, and presumably will."[56] Legislation segregating public funds and limiting their use to educational purposes should cure the problem in Vermont.

The most important update since this article was written is that the United States Supreme Court denied certiorari in *Kotterman*.[57] The Court's decision leaves in place a dollar-for-dollar credit of up to $500 for donations to "school tuition organizations" and up to $200 in additional tax credits for direct gifts to extracurricular activities. While, technically, *Kotterman* is not a United States Supreme Court precedent and is binding only in Arizona, the Supreme Court's denial of certiorari clearly indicates "the momentum is on the side of school-choice supporters."[58]

55 *Ibid.* at 1.

56 *Ibid.* at 22.

57 1999 U.S. LEXIS 6553 (Oct. 4, 1999).

58 Frank J. Murray, "Supreme Court for second time allows for vouchers", *Wash. Times*, Oct. 5, 1999, int. ed. (quoting Clint Bolick of the Institute for Justice).

IV. Expanding Parental Choice with a Universal Tuition Tax Credit

Unlike a traditional tuition tax credit that may be used only by parents to offset their personal income tax, the UTTC is "universal" in character, meaning that it may be used for any private school student and by any Utah taxpayer.

What is the Universal Tuition Tax Credit?

The Universal Tuition Tax Credit (UTTC) is based on the principle that Utah parents know what type of educational environment is best for their children. Parents who choose to send their children to a non-public school should not be penalized by having to pay twice for education—once through their taxes and again when they pay tuition to a non-public school. The UTTC establishes basic fairness by allowing parents who choose a non-public school to do so without being so heavily penalized. As described here, the UTTC will benefit both public and private schools.

Unlike a traditional tuition tax credit that may be used only by parents to offset their personal income tax, the UTTC is "universal" in character, meaning that it may be used for any private school student and by any Utah taxpayer. Any taxpayer—individual or corporate—that pays tuition for a Utah student to attend a Utah private elementary or secondary school may use the credit to offset the taxpayer's state income tax.

It is important to recognize that the UTTC is a tax credit, not a tax deduction. This means that it can be subtracted directly from the taxpayer's tax liability, not simply used to reduce the taxable income. Therefore, if a taxpayer has a pre-credit tax liability of $2,500 and a tuition tax credit of $1,000, the taxpayer would pay a tax of only $1,500.

The UTTC plan can be accomplished using the existing state income tax with its existing mechanisms for tax payment, refunds, enforcement mechanisms, and credits. It would add one more to ten similar tax credits already in place.

Many people in Utah are not aware that all Utah income taxes go to support education. Unlike other states where the state income tax goes into the general fund to be expended on a variety of state programs, all income taxes are constitutionally committed to go to education. Therefore, a tuition tax credit would be easier to implement in Utah than almost any other state. The income tax fund in Utah is an educational fund: the Uniform School Fund. A student transferring from a public to a private school reduces the demand on the Uniform School Fund by more than the tax credit allowed for that same student. Because of that, everybody benefits: the student, the taxpayer, and the Uniform School Fund.

How Does the UTTC Work?

The UTTC is very simple and straightforward. When a taxpayer pays all or part of the tuition for a Utah child to attend a private school, that taxpayer may claim a portion of the tuition paid as a credit against his state income tax. Only taxpayers who

owe taxes can claim the credit. Taxpayers who do not owe taxes cannot receive a "refund" from the state.

The maximum allowable credit per child would be phased in over a period of several years, starting in the tax year when the UTTC is enacted by the legislature. The proposed starting amount would be $1,000 for each new private school student who was in public schools when the bill passed or was too young at the time for public school kindergarten. For students already in private school, the tax credit would start smaller and build up to equal $1,000. After that, the tax credit for all private school students would increase, eventually equaling 50 percent of the average per-child cost of public schooling. Thus, the tax credit will never be more than half of the total amount spent per child in the public school system. Note that the amount of the tax credit for students transferring from a public school to a private school or starting kindergarten in a private school is higher in the first few years than the tax credit amount for students already in private school.

Students currently being educated at home who transfer into private schools would be treated the same as students already in private schools, since neither would bring in additional funding into the program. We anticipate that few home school students would transfer to private schools and the tax credits for existing private school students would not be significantly reduced.

Table 1 (see next page) shows the projected amount of the credits over a period of 35 years. The purpose of the phase-in period is to minimize impact on the state budget and to allow for an orderly expansion of private schooling capacity as demand increases. It also shows the projected number of public school students that would transfer to private schools, 1.2 percent immediately after the tax credit is passed, and 0.1 percent per year afterward (these projections will be explained in chapter V).

A phase-in period of 30 years may seem excessive, but it may be needed for the bill to receive a zero fiscal note. The idea of a zero fiscal note is that the state's reduced contribution to public education, because of reduced numbers of public school students, is matched by the reduced tax collections, due to the tax credits. Thus no new fiscal expenditures are needed for the program.

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Is This Phase-in Fair to Families Already Using Private Schools?

Families of existing private school students might think it unfair that students transferring out of public schools (or starting private kindergarten) get a $1,000 tax credit while existing private school students get less. While such a reaction is understandable, the only reason that existing students could get a credit at all under this plan is because of the savings to the state created by transferring students. If existing private school students received the same credit as transferring students, the amount available to each would be smaller, and fewer students would transfer.

The purpose of the phase-in period is to minimize impact on the state budget and to allow for an orderly expansion of private schooling capacity as demand increases. Table 1 shows the projected number of public school students that would transfer to private schools, 1.2 percent immediately after the tax credit is passed, and 0.1 percent per year afterward.

Table 1. Projected Tax Credits for Private School Students

		CREDIT PER STUDENT		ANNUAL SAVINGS TO TAXPAYERS	
Tax Year	Private Enrollment	Transferring or Kindergarten[a]	Existing Private School Students	State Income Tax (millions)	Local Property Tax (millions)
2000	14,500	$0	$0	0.0	0.0
2001	20,093	$1,000	$791	0.0	7.7
2002	20,695	$1,000	$875	0.0	8.6
2003	21,316	$1,000	$979	0.0	9.4
2004	21,956	$1,050	$1,050	0.0	10.3
2005	23,845	$1,212	$1,212	0.0	12.9
2006	25,140	$1,309	$1,309	0.0	14.7
2007	26,430	$1,396	$1,396	0.0	16.5
2008	27,724	$1,475	$1,475	0.0	18.3
2009	29,033	$1,548	$1,548	0.0	20.1
2010	30,362	$1,616	$1,616	0.0	21.9
2011	31,709	$1,679	$1,679	0.0	23.8
2012	33,075	$1,737	$1,737	0.0	25.7
2013	34,471	$1,792	$1,792	0.0	27.6
2014	35,899	$1,844	N/A	0.0	29.6
2015	37,359	$1,893	N/A	0.0	31.6
2016	38,849	$1,939	N/A	0.0	33.7
2017	40,392	$1,983	N/A	0.0	35.8
2018	41,963	$2,024	N/A	0.0	38.0
2019	43,565	$2,064	N/A	0.0	40.2
2020	45,207	$2,101	N/A	0.0	42.4
2021	46,893	$2,137	N/A	0.0	44.8
2022	48,626	$2,171	N/A	0.0	47.2
2023	50,406	$2,203	N/A	0.0	49.6
2024	52,234	$2,234	N/A	0.0	52.1
2025	54,113	$2,264	N/A	0.0	54.7
2026	56,044	$2,293	N/A	0.0	57.4
2027	58,028	$2,320	N/A	0.0	60.2
2028	60,069	$2,346	N/A	0.0	63.0
2029	62,168	$2,372	N/A	0.0	65.9
2030	64,327	$2,396	N/A	0.0	68.9
2031	66,309	$2,401	N/A	1.0	71.6
2032	68,298	$2,401	N/A	2.4	74.3
2033	70,347	$2,401	N/A	3.8	77.2
2034	72,458	$2,401	N/A	5.3	80.1

[a] Transferring from public school or beginning kindergarten in a private school.

Assumptions:

(1) Amounts in the table are based on total per-child public school spending of $4,801 per year for the 1997-98 school year. If this amount increases with inflation, the tax credit amount will automatically rise by the same percentage.

(2) Private school enrollment would continue growing at 3 percent per year without a tuition tax credit. The effect of a tax credit is to lower the effective price of private schooling, increasing the demand. A demand elasticity of 1.3 is assumed, where an effective price reduction of 1 percent causes a 1.3 percent increase in demand. Current prices of private schooling are lumped as follows: 43 percent of students costing $2,500 each, 36 percent at $4,500, 3 percent at $6,500, and 17 percent at $10,000. The greatest demand will occur in the lower-priced private schools. This distribution of private school costs was taken into consideration in constructing the table. It is assumed that each student transferring from public schools brings $3,093 per year into the program (the entire state's contribution per public school student), which is used to pay for the tax credits.

Alternatively, the amount could be made higher, but the plan could not achieve a zero fiscal note.

Therefore, the $1,000 tax credit actually works to the advantage of existing private school families by attracting a large number of transfer students into private schooling. These transfer students bring more money into the program, increasing the tax credits for existing private school students to $791 the first year. If both existing and transferring private students got the same tax credit, there would be fewer transferring students. The tax credit for both groups would be only $619 the first year, although the amount would catch up by the year 2005 to the tax credit amounts listed in Table 1.

At any time in the future the legislature could decide to speed up the phase-in to make it more equitable to all private school families. However, a faster phase-in would require legislative appropriations to cover the amounts by which the tax credits exceed the savings due to reduced public school enrollment.

Is This Phase-in Advantageous to Public Schools?

Some will argue that not all of the budgeted public school funding tracks with enrollment, so it is too generous to claim the state's contribution as a savings when a student transfers from public schooling. A district or school with a small percentage less students still requires the same school administrators, the same buildings, the same buses, and usually the same teachers.

A public school district that experiences only a small percentage reduction in students may not be able to hire fewer employees. However, the district would still experience the benefits of fewer students per teacher—a class-size reduction. Thus, even if no actual monetary savings occur, a definite value is realized in class-size reduction.

A related argument is that only easy-to-educate students go into private schooling, so the tax credit should be reduced to compensate for the "hard-to-educate" students that are left behind. It is unlikely that only good students would migrate, as parents whose children are having difficulty in public schools would have great incentive to take advantage of the tax credit. Even if it did happen, less than 14 percent of the state school budget has anything to do with special education, at-risk students, highly impacted schools, or other special programs. Since the tax credit would never exceed 50 percent of per-pupil spending, a small reduction in "easy-to-educate" students would not place a financial burden on those who remain.

A public school district that experiences only a small percentage reduction in students may not be able to hire fewer employees. However, the district would still experience the benefits of fewer students per teacher—a class-size reduction.

The UTTC will vastly expand parental choice in education in Utah, bringing with it the dynamics of consumer choice and a competitive educational marketplace. It will result in marked increases in educational quality, educational opportunity, and parental involvement.

Implementation of the UTTC

The state legislature and the Utah State Tax Commission would develop the administrative procedures for implementing the UTTC. Such procedures should include the following provisions, also described in the section, "Legislative Implementation of the UTTC":

- Allow individuals and corporations the option to make contributions to the tuition of one or more private school students, and to claim a tax credit for part of the amount contributed.
- Modify the state Individual Income Tax Form to provide a convenient way for individuals to claim the credit against their individual income tax.
- Modify the Corporate Income Tax Form to provide a convenient way for businesses to claim the credit against their business tax.
- Provide for a model year-end receipt to be issued by private schools that will track total tuition payments for each identified student and the maximum credit allowed each contributor to that student's tuition. This will assure that credits are accurately tracked and certify the proper credit that each tuition-payer can claim.
- Allow for nonprofit scholarship organizations or charitable foundations that act as conduits for scholarship funds to make direct tuition payments and handle record keeping. The scholarship organization would provide a year-end receipt indicating the total contribution and total tax credit to be claimed by each contributing corporation or individual. The scholarship foundation would keep part of the contributions for accounting and handling expenses and pass through all tax credits to the contributors. These options would allow individuals and businesses to support multiple students and multiple schools, either by providing direct support through the individual schools or by contributing to a single scholarship organization or charitable foundation that provides direct support to individual students. Many businesses would prefer to contribute to a single scholarship organization rather than deal with multiple students and multiple schools.

Key Benefits of the UTTC

The UTTC has several benefits:

1. The UTTC will vastly expand parental choice in education in Utah, bringing with it the dynamics of consumer choice and a competitive educational marketplace. It will result in marked increases in educational quality, educational opportunity, and parental involvement.
2. The UTTC overcomes the defects of traditional tax credits by allowing both parents and non-parents to obtain tax relief when they support a student at a pri-

vate school. Under this method, even low-income parents who pay little or no state income tax can benefit from the program through scholarships made available by other taxpayers. Friends and relatives of a student could pay all or part of the student's tuition at a private school and receive credit against their individual income tax. A corporation could also pay tuition and receive a tax credit against its corporate tax. The only costs to such taxpayers of assisting parents and students will be: (1) the amount by which their contribution exceeds the tax credit allowed; (2) the interest their contribution could have otherwise earned; and (3) the minimal time required to complete the paperwork associated with claiming the credit.

3. The UTTC will have no negative effect on the revenues of municipal governments such as cities, counties, or towns. Because revenues from the individual income tax all accrue to the state of Utah, the credits will not reduce local revenues.

4. The UTTC will have a positive effect on the revenues available for public school students. Local property taxes are not affected or reduced when students transfer to private schools, leaving the local school district with the same local funding but fewer students. This means more local money per public school student. These additional revenues could be used to hire more teachers, reduce class sizes, pay public school teachers more, or purchase computers or other educational supplies.

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Examples of How the Universal Tuition Tax Credit Could Be Used

The following are several examples of how the UTTC would work. These examples are based on an average per-pupil public school revenue of $4,801,[1] yielding a maximum credit amount of $2,401. These examples also assume that the maximum credit is fully implemented, which would only occur a number of years after the UTTC is adopted. Until that time, the actual maximum tax credit would be considerably smaller.

1. Sarah Jones, a single mother, lives in a low-income residential area of Ogden. She wants to take her children out of the neighborhood public school because of the lack of achievement her children are experiencing. She would like to send them to a local Catholic school known for emphasizing discipline and academic achievement. Because of her low income and the availability of scholarships for families like hers, Sarah's children are able to enroll in the local Catholic school. The scholarship program receives funding from businesses and individuals that wish to help poor children attend private schools. The donors are able to take advantage of the UTTC by donating to the scholarship fund and are able to claim part of the amount contributed as a tax credit. The businesses and individuals who contribute to this program earn national and community goodwill.

1 Based on statewide revenues and expenses as reported by the Utah State Office of Education, including K-12 education expenses, materials and equipment, building construction, and interest costs.

2. John and Jean Smith, a middle income family living in South Salt Lake, pay a total of $4,500 for tuition and books to send their only child to Mt. Vernon Academy. The Smiths would qualify for a tax credit of up to $2,401 or the amount of taxes owed, whichever is lower. When the Smiths fill out their state income tax return, they find that they have a total tax liability of $1,600. Since the maximum allowable tax credit exceeds their current tax liability, the Smiths would be able to receive the credit only up to the amount of tax owed. Therefore their credit would be $1,600 and they would pay zero dollars in income tax.

3. The Smiths could combine their tax credit with extended family members or others who might also wish to contribute to the tuition and books for their child. For example, the child's grandparents might pay $1,000 toward the child's tuition and claim $1,000 of the tax credit. The Smiths could then claim the other $1,401 of the tax credit against their tax liability of $1,600, getting the full advantage of the tax credit. They would pay only $2,099 net for tuition and books.

4. Richard Simon, a wealthy attorney living in Sandy, pays $10,000 each year to send his only child to Waterford School. He takes a tax credit of $2,401 against his state individual income tax liability of $4,000. Therefore it costs Mr. Simon $7,599 per year instead of $10,000 to send his child to private school ($10,000-$2,401=$7,599).

The first step to developing an effective implementation strategy is tracking tuition payments and applying the appropriate credit. A model of how this could be accomplished is the existing procedure for claiming the other non-refundable tax credits already included on the Utah Individual Tax Return TC-40 and the Corporate Income Tax Form TC-20 (Schedule A).

Legislative Implementation of the UTTC

Establishment of the UTTC would require the legislature to enact an implementing statute to provide the means by which Utah individual and corporate taxpayers may claim the tuition credit against the state individual or corporate income tax owed. The implementation will involve three key areas: 1) accurately applying the credits to specific students and their contributors; 2) establishing a method by which taxpayers may financially support a number of students without having to engage in extensive, detailed record keeping; and 3) developing the tax forms and filing procedures for claiming the credit.

Tracking Tuition Payments and Credits

The first step to developing an effective implementation strategy is tracking tuition payments and applying the appropriate credit. A model of how this could be accomplished is the existing procedure for claiming the other non-refundable tax credits already included on the Utah Individual Tax Return TC-40 and the Corporate Income Tax Form TC-20 (Schedule A).

To eliminate the possibility that several taxpayers will claim total credit for a single student in excess of that allowed by law, the legislature may require participating private schools to issue receipts showing the names of the persons contributing to the tuition for a particular student, the total tuition payments made by each contributor

for that student, and the amount of the tax credit each contributor is claiming. The Tax Commission may require that a copy of this receipt be submitted by the taxpayers with their returns.

During the phase-in period, the maximum tax credit amount is calculated based on the number of students who have migrated from public to private schools. To calculate this amount, the Utah State Tax Commission would need to know the number of students migrating from public to private schools since the bill's passage. To find this number, the legislature might require that participating private schools submit an enrollment report each fall. The report would indicate the total number of new students enrolled who were enrolled in public school on the date that the UTTC was enacted. Most private schools already file a slightly less extensive enrollment report with the Utah State Office of Education each fall. Schools not filing the enrollment report would disqualify the families of their students from claiming the tax credit.

Minimizing Record Keeping by Taxpayers

Businesses and taxpayers with substantial tax liability may wish to pay tuition for many private school students. Because of the record keeping that would be involved in dealing with multiple students and multiple businesses, most businesses would prefer to make payments through non-profit charitable organizations. Much like scholarship organizations in higher education, these organizations would act as a conduit to make direct tuition payments. They would handle the necessary record keeping and might also identify deserving or needy students to receive scholarships.

These organizations may be either existing non-profit charities or special scholarship organizations that are dedicated exclusively to paying tuition for students who attend private schools. The scholarship organizations would also solicit funds to cover their administrative costs as well as any scholarship amounts in excess of the tax credits allowed. A year-end receipt to each donor would indicate what total contribution was received and how large a tax credit could be claimed.

A provision to allow for contributions to such organizations should be included in the enabling statute enacted by the legislature. Such a provision will remove from businesses and individuals the administrative burden of supporting multiple students at multiple schools, thereby improving the accessibility of the UTTC, especially for low-income families.

Tax Forms and Filing Procedures

Both the Utah Individual Income Tax Form TC-40 and Corporate Income Tax Form TC-20 (Schedule A) currently provide for ten or more ordinary (non-refundable) tax credits. Adding a tax credit for tuition and fees paid for private school tuition would be relatively straightforward from the taxpayer's perspective. Both of these tax forms (shown on the following pages) should be modified to permit a private school tuition credit by a procedure similar to that currently used for claiming the tutoring tax credit for disabled dependents or other tax credits.

Both the Utah Individual Income Tax Form TC-40 and Corporate Income Tax Form TC-20 (Schedule A) currently provide for ten or more ordinary (non-refundable) tax credits. Adding a tax credit for tuition and fees paid for private school tuition would be relatively straightforward from the taxpayer's perspective.

Utah Corporation Franchise or Income Tax Return for 1998, Form TC-20, page 3, showing the 12 non-refundable tax credits already available.

[illegible] Corporation [illegible] Income [illegible] TC-20 A Rev. 12/98

Corporation Name	Taxable Year Ending	Employer Identification Number

1. Unadjusted income/loss (federal taxable income) before NOL and special deductions (federal form 1120/1120-A)		1	00
2. Additions to unadjusted income (Schedule B, line 16)		2	00
3. Subtractions from unadjusted income (Schedule C, line 14)		3	00
4. Adjusted income (add amounts on lines 1 and 2, then subtract amount on line 3)		4	00
5. Nonbusiness income net of related expenses from Schedule H			
(a) Allocated to Utah (from Schedule H, line 13)	5a		00
(b) Allocated outside Utah (from Schedule H, line 26)	5b		00
Nonbusiness income total (add lines 5a and 5b)		5	00
6. Apportionable income before contributions deduction (subtract line 5 from line 4)		6	00
7. Utah contributions (Schedule D, line 7)		7	00
8. Apportionable income (subtract line 7 from line 6)		8	00
9. Apportionment fraction (100% or Schedule J, line 7)		9	%
10. Apportioned income (line 8 multiplied by line 9)		10	00
11. Nonbusiness income allocated to Utah (from line 5a above)		11	00
12. **Utah Taxable Income/Loss** (add lines 10 and 11) (see instructions page 6)		12	00
If line 12 is a (loss), did you elect to forego the Federal net operating loss carryback? You must select "Yes" or "No." If you do not make a selection, it will be assumed that your answer is "No" and the loss will be treated as carryback			☐ Yes ☐ No
13. Utah net loss carried forward from prior years (attach documentation) (see instructions page 6)		13	00
14. **Net Taxable Income** (subtract line 13 from line 12)		14	00
15. Calculation of tax (see instructions page 6)			
(a) Multiply line 14 by .05, or $100 minimum per corporation listed on Schedule M, whichever is greater	15a		00
(b) Interest on installment sales deferred tax (see instructions)	15b		00
Tax amount (add lines 15a and 15b)		15	00
16. **Nonrefundable Credits** (see line-by-line instructions, pages 6 - 9)			
a. Qualified sheltered workshop cash contribution credit	16a		00
b. High technology equipment contribution tax credit	16b		00
c. Utah municipal, U.S. and agency bond interest tax credit	16c		00
d. Enterprise zone credit	16d		00
e. Utah steam coal credit (15 year carryforward)	16e		00
f. Clean fuel vehicle credit - (attach form TC-40V)	16f		00
g. Clean fuel alternative credit - (attach form TC-40F)	16g		00
h. Historic preservation credit (attach form TC-40H)	16h		00
i. Low income housing credit (see instructions)	16i		00
j. Credit for employers who hire disabled employees (attach TC-40HD)	16j		00
k. Recycling market development zone credit (attach form TC-40R)	16k		00
l. Energy systems installation credit (attach form TC-40E)	16l		00
Total nonrefundable Credits (add lines 16a - 16l) (See instructions)		16	00
17. **Net Tax** - (subtract line 16 from line 15) (cannot be less than the minimum tax per corporation)		17	00
18. **Refundable Credits** (see line-by-line instructions page 9)			
a. Mineral production withholding (attach TC-675R)	18a		00
b. Off-highway Utah agricultural gas tax credit	18b		00
c. Total prepayments (Schedule E, line 4)	18c		00
Total refundable credits (add lines 18a through 18c)		18	00
19. **Amended Returns Only** (see instructions page 9)		19	00
20. **Total refundable credits** (add lines 18 and 19)		20	00
21. Overpayment - If line 20 is larger than line 17, subtract line 17 from line 20		21	00
22. Amount of overpayment to be applied as advance payment for next year		22	00
23. **Refund** - subtract line 22 from line 21, enter amount here and on TC-20, line 8		23	00
24. **Tax Due** - if line 17 is larger than line 20, subtract line 20 from line 17, enter amount here and on TC-20, line 9		24	00
25. Quarterly Estimated Prepayments Meeting Exceptions. Check boxes that correspond to the quarterly installment that qualify for exceptions to penalties (see "Prepayment Requirements", page 1) Attach supporting documentation			1 ☐ 2 ☐ 3 ☐ 4 ☐

The total nonrefundable credits on line 16 cannot exceed the amount on line 15

As mentioned previously, the legislature may also wish to require that private schools issue receipts showing the names of all persons contributing to the tuition of a particular child, the total tuition payments made by each contributor for that child, and the amount of the tax credit each contributor is claiming. Such a receipt would eliminate the possibility that several taxpayers would claim total credit for a single child in excess of the amount allowed by law. The Tax Commission may require that a copy of this receipt be submitted by each taxpayer with the tax return.

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Utah Individual Income Tax Return for 1998, Form TC-40, page 2, showing the 10 non-refundable tax credits already available.

Utah Income Tax Return TC-40 (1998) Page 2

CONTRIBUTIONS

25. Enter amount from line 24 (Subtotal - Utah income tax and use tax) — 25 — 00

26 Contributions (page 9)

26a. Homeless trust fund	• 26a	00	
26b. Kurt Oscarson Children's organ transplant fund	• 26b	00	
26c. Utah nongame wildlife fund	• 26c	00	
26d. State colleges and universities — College code •	• 26d	00	
26e. Nonprofit school district foundation — School district code •	• 26e	00	
Total contributions (add lines 26a through 26e)			26 — 00

27. AMENDED RETURNS ONLY - previous refunds (page 10) — • 27 — 00

28. Total tax and contributions (add lines 25, 26, and 27) — 28 — 00

WITHHOLDINGS AND CREDITS

29. *UTAH TAX WITHHELD* (must attach W-2 and/or 1099 forms) (page 10)	• 29	00
30. UTAH RESIDENTS ONLY - Credit for income tax paid to another state (page 10) (use form TC-40A, Part 1)	• 30	00
31. Credit for Utah income taxes prepaid (page 10)	• 31	00
32. AMENDED RETURNS ONLY - previous payments (page 10)	• 32	00

33. Nonrefundable credits (pages 10 through 12)

33a. Energy systems installation credit (attach TC-40E)	• 33a	00
33b. Clean fuel alternative credit (attach TC-40F)	• 33b	00
33c. Clean fuel vehicle credit (attach TC-40V)	• 33c	00
33d. Historic preservation credit (attach TC-40H)	• 33d	00
33e. Enterprise zone credit (amended by legislature in 1998)	• 33e	00
33f. Qualified sheltered workshop cash contribution credit — Name of workshop ____ — Total cash contribution ____ x 50% (maximum credit is $200)	• 33f	00
33g. Low income housing credit (see instructions for required forms)	• 33g	00
33h. Tax credits for employers who hire disabled employees (attach TC-40HD)	• 33h	00
33i. Recycling market development zones (attach TC-40R)	• 33i	00
33j. Tutoring tax credit for disabled dependents	• 33j	00
Total nonrefundable credits (add lines 33a through 33j)		33 — 00

UTAH RESIDENT: The total nonrefundable credits on line 33 cannot exceed the amount on line 21 less line 31

NON or PART-YEAR RESIDENT: The total nonrefundable credits on line 33 cannot exceed the amount on line 22

34 Other credits (page 12)

34a. Mineral production withholding tax credit (attach TC-675R and/or K-1)	• 34a	00
34b. Agricultural off-highway gas/undyed diesel tax credit. Gallons ____ X .245	• 34b	00
34c. NON or PART-YEAR RESIDENTS ONLY Nonresident shareholder's withholding tax credit — Federal ID number ____	• 34c	00
Total other credits (add lines 34a through 34c)		34 — 00

◀ Attach copy of federal form 1040 Schedule F for credit on line 34b

35. Total withholding and credits (add lines 29, 30, 31, 32, 33, and 34) — 35 — 00

TAX DUE

36. Tax due - If line 28 is larger than line 35, subtract line 35 from line 28. This is the amount you owe. (page 12) — 36 — 00

37. Penalty and interest (pages 3 and 13) — 37 — 00

38. Total amount paid with this return (add lines 36 and 37) — • 38 — 00

REFUND

39. Refund - If line 35 is larger than line 28, subtract line 28 from line 35. This is your refund. (page 13) — 39 — 00

Apply my refund to my 1999 taxes. I understand that I will NOT receive a refund this year. (page 13) — •

If this is an AMENDED return, you cannot apply your refund to next year's tax liability.

Under penalties of perjury, I declare that to the best of my knowledge and belief, this return and accompanying schedules reflect my true tax status.

Your signature — Date signed — Occupation

Spouse's signature (if filing jointly, both MUST sign even if only one had income) — Date signed — Occupation

Paid Preparer's Section

Paid preparer's signature — Date signed — Check if self-employed — Preparer's Social Security no.

Firm's name (or yours if self-employed) — Telephone number — E.I. number

Paid preparer's complete address — City — State — ZIP code

Protection Against Overregulation

The policy objective of the UTTC is to allow parents to choose the school that they feel best meets the needs of their child. Since parents are in control of where the UTTC is spent, the state should refrain from subjecting parents and private schools to regulations that may hinder learning, discourage and frustrate professional educators, increase operating costs, and have no bearing on the health, safety, or education of students.

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Some people have legitimate concerns that implementation of the UTTC would bring overburdening and unnecessary state control over private schools. Public school teachers and administrators agree that current Utah regulations impose excessive mandated procedures, record keeping, and reporting requirements that hinder the education process and drive up costs. It is important that private schools are protected from this same over-regulation while maintaining a safe and healthy environment in which children may learn. To prevent private schools from being subject to such regulations, the legislature should include language in the enabling statutes protecting private schools against over-regulation.

To prevent private schools from being subject to such regulations, the legislature should include language in the enabling statutes protecting private schools against over-regulation.

It is probably not feasible to specify particular areas to exempt from state or local regulation due to the difficulty of identifying and defining all such areas. Broad language prohibiting "burdensome" or "onerous" regulations is vague, would leave the definitions of "burdensome" or "onerous" to the courts, and would invite charges that such language would spawn a flood of litigation. One reason that private schools are efficient and effective is that they escape many of the debilitating restrictions and regulations that public school teachers and administrators complain about. They are sufficiently regulated by existing laws regarding building and health codes as well as by parents that seek accredited, safe private schools. Such parents can transfer students back to public schools if they deem it necessary.

V. Universal Tuition Tax Credit Dynamics

Predicting the effects of the proposed Universal Tuition Tax Credit (UTTC) on state and local taxpayers relies on fundamental principles of economics. In the Utah K-12 education market, while the cost of sending a child to a public school is $4,801 (state and local per pupil expenditures) the "price" of sending a child to a public school, as perceived by the parents, is close to zero. The price of sending a child to a private school is substantially higher, $4,879 per pupil including the average tuition, transportation, and any other costs not imposed by traditional public schools. Consumer behavior, in this case specifically the behavior of the parents of school-aged children, can be best predicted by estimating price elasticity of demand.[1]

Price Elasticity of Demand

The "Law of Demand" is simply that as the price of a good or service goes up, the quantity demanded of that good or service goes down. Elasticity of demand is the slope of the demand curve, a measure of how much the quantity demanded changes in proportion to changes in price, or more precisely "the percentage change in quantity given a percentage change in price." If a one-percent increase in the price of a product produces a one-percent decrease in the quantity demanded, the price elasticity is said to be one. For most goods price elasticities tend to be between 0.5 and 1.5, with 1.0 being most common. Indeed, it is likely elasticity of demand for private K-12 education in Utah will be close to 1.0 under the UTTC. Elasticity can vary over the length of the demand curve but tends towards 1.0 over time just as the market tends toward equilibrium. Demand for necessary goods such as salt or drinking water is very constant over the long run, and thus is said to be highly inelastic, or inflexible, near 0.1. In other words, if the price of salt rose by 10 percent, there would only by a one-percent decrease in the demand for salt. Contrariwise demand for luxury goods, such as restaurant food or foreign travel, can be highly elastic—near 4.0.

There is little empirical evidence regarding the price elasticity of demand for private education under a UTTC, as these programs are just now being implemented, with states like Arizona and Wisconsin in the forefront. In the absence of historical evidence the assumption of an elasticity between 1.0 and 1.5 is the most sound. The strength of demand and the elasticity of demand are not directly corollary, but strong demand would generally indicate a lower elasticity. Perhaps the strongest indicator of demand in Utah is the number of parents who are already sending their children to private rather than public schools, without any tax credits. Nationwide, what evidence is available shows that a very strong demand exists.

1 Many of the more technical details discussed in this chapter are summarized from the Mackinac Center for Public Policy November 1997 study of a similar universal tuition tax credit in Michigan. We are indebted to them for their seminal work.

In New York City alone over 22,000 children want a chance at one of the 1,200 grants now offered by the School Choice Scholarship Foundation. Demand has far exceeded the initial supply. In another highly publicized case, 1.25 million inner-city children in 37 cities across the country applied for one of the 40,000 partial K-8 scholarships offered by the Children's Scholarship Fund. Despite an average income of less than $22,000 per year, applicants were willing, indeed eager, to contribute $1,000 per year over four years to supplement the partial scholarships. This is $5 billion from families who are financially struggling and already enjoying public education for "free." Nationwide trends aside, it could be somewhat different in any one state such as Utah.

Utah parents already sending children to private schools without any tax credit indicate that they, at least, have a very inelastic demand for alternative schooling. Further, R.T. Nielsen surveyed 300 Utah voters in February 1997; 79 percent supported school choice in general, and 61 percent supported a tuition tax credit for parents sending their children to private schools. Of those surveyed, 54 percent said they would consider sending their children to a private school were a tax credit available in Utah.[2] This poll does not account for the size of the tax credit and thus cannot lead to a precise estimate of elasticity, but it does indicate that demand for such schools is fairly elastic, which supports the usage of an elasticity estimate of 1.0 to possibly 1.5. An estimate of 1.3 is concluded for use in this study.

Of those surveyed, 54 percent said they would consider sending their children to a private school were a tax credit available in Utah.

Price Elasticity of Utah Private Schools (Supply Elasticity)

Demand is only one half of the economic equation and will go nowhere if supply is lacking. Elasticity of supply is an indication of how quickly suppliers respond to changes in the market, whether in price or quantity demanded. Estimating an actual price elasticity of supply is exceptionally difficult and beyond our scope. More important is an accounting of currently vacant private school capacity and ability to expand private school capacity in the future. A survey of Utah private schools conducted by the Sutherland Institute indicated an overall additional capacity of 16 percent in 1998 with expansion plans that would bring the excess to 44 percent. This is on top of their steady annual 3 percent growth rate in enrollment, without any tax credit. Over the long term it is unlikely, despite current expansion plans, that the private schools could handle anything over 20 percent growth per year.

It seems clear that the suppliers of private education will be able to respond to any market-driven demand increases.

2 R.T. Nielson poll of Utah voters, February 15, 1997. Seventy-nine percent supported or strongly supported the idea of providing parents with the option of sending their children to the school of their chioce—either public, private or parochial—rather than only to the school to which they were assigned. When asked if they supported the idea of allowing parents to use the tax dollars allotted for their child's education in the form of a scholarship to attend the school of their choice, 61 percent responded favorably. Voters were distributed throughout the state and 54 percent had school-age children at home. The poll had a margin of error of five percent.

Predicting Consumer Behavior

Applying this analysis to the price of private schools, given the existence of a tuition tax credit, we can predict consumer behavior. Table 1 shows how the UTTC changes the incentive for parents to send their children to a private school, reflecting the increase in demand based on the decrease in relative price. Basic data for the 2000 school year shows no tuition tax credit. The tax credit begins at $1,000 for transferring students and a smaller amount for those students already in private schools. This

Table 1. Incentives to Migrate from Traditional Public Schools to Private Schools

Year	Average Private School Tuition [a]	Maximum Tax Credit per Student [b]	Maximum Tax Credit as Share of Tuition	Change in Relative Price of Tuition	Raw Estimated Migration to Private Schools	Smoothed Estimated Migration to Private Schools
2000	$4,879	–	–	0.00	0.00	–
2001	$5,099	$1,000	20%	-0.20	0.26	0.15
2002	$5,328	$1,030	19%	0.00	0.00	0.07
2003	$5,568	$1,061	19%	0.00	0.00	0.04
2004	$5,818	$1,148	20%	-0.01	0.013	0.01
2005	$6,080	$1,364	22%	-0.02	0.026	0.03
2006	$6,354	$1,518	24%	-0.02	0.026	0.03
2007	$6,640	$1,667	25%	-0.01	0.013	0.02
2008	$6,938	$1,814	26%	-0.01	0.013	0.01
2009	$7,251	$1,961	27%	-0.01	0.013	0.01
2010	$7,577	$2,108	28%	-0.01	0.013	0.01
2011	$7,918	$2,256	28%	0.00	0.00	0

[a] Includes a 4.5 percent inflation rate

[b] Includes a 3.0 percent inflation rate

differentiation is necessary at first to develop enough savings in the state system to justify initial implementation. Over time the tax credit grows to near half of the average private school tuition. Note the numbers derived in this section differ slightly from those in the previous sections as a 3.0 percent inflation factor is used here, but private school tuition is inflated at 4.5 percent, as will be explained. Also, the cost of private schools is based on the average tuition among all private schools, not split into cost categories as was done in chapter IV, Table 1, earlier in this report. Also, the migration pattern of students from private to public schools is smoothed out over several years. This will be explained below in the section, "Applying Constraints to the Model."

Calculating Demand

If we assume the UTTC plan takes effect in 2001, the tax credit of $1,000 per pupil is 20 percent of the average private school cost per pupil. This changes the relative price of private schools by roughly the same amount, 20 percent. Thus, given elasticity of demand of 1.3, we would expect a 26 percent increase in the quantity of private schooling demanded, with additional impacts each year as the tax credit amounts increase and the program is phased in. Note that as the program continues, more students than indicated here may transfer to private schools for reasons other than the change in relative price (for example, more parents becoming aware of the availability of the tax credit.) However, as such intangible factors cannot be accurately estimated, no such additional increase in migration is considered. Finally, the tax credit could induce some home-schoolers to transfer their children into private schools. Such numbers, if any, are considered to be quite small, and insofar as home school students are already out of the public school system, the impact of such transfers is far less significant than the transfers of students currently in the public system.

Applying Constraints to the Model

It must be noted that several constraints impact the model. First, increasing the relative affordability of private schools will probably boost the rate of increase of private school tuition, an almost unavoidable effect. Thus we assume the average private school tuition grows at 4.5 percent per year, 50 percent faster than the 3.0 percent growth assumed for public school per-pupil costs.

As mentioned, the private schools can handle at most 20 percent growth per year over the long term. This is a clear constraint. Further, behavior does not change overnight. Parents with children in traditional public schools are not likely to pull them all out or move them around the first year the tax credit is available. Thus we smoothed the migration factor to a somewhat slower migration than straight elasticity of demand analysis would indicate.

Table 2 shows the predicted number of students who would migrate from traditional public schools to private schools, based on the preceding analysis. Table 2 begins with the base or current trend of growth in private school students. Since the main dynamic in consumer choice in the education market is between traditional public schools and private schools, the model is constrained to address movement between these two sectors only, not within each sector (such as between charter schools and regular public schools or between existing private schools and home schools). The relative size of these sectors indicates their impact is relatively negligible and can thus be safely omitted. We apply the smoothed migration factor from the projected year 2000 private school enrollment of 14,500 students.

It is important to note that the above migration percentages are as a fraction of the current private school enrollment, as that is the best indicator of demand for private schooling. As a percentage of the current public school enrollment, the migration is well below 1.5 percent over the course of ten years.

Limits on Migration

It is unlikely that any sector of the economy can grow at 10-20 percent indefinitely. Certainly a 15 percent increase in private school enrollment would be a one-year-only event. Over the long run 10-15 percent is the likely limit to any such growth. Note that as the plan is phased in, the migration declines.

Table 2. Likely Migration to Private Schools under UTTC Plan

Year	Current Private School Students[a]	Migration Rate	Migration	Cumulative Migration	Total Private School Students
2000	14,500	0	0	0	14,500
2001	14,935	0.15	2,175	2,175	17,110
2002	15,383	0.07	1,045	3,220	18,604
2003	15,845	0.04	615	3,836	19,680
2004	16,320	0.01	158	3,994	20,314
2005	16,809	0.03	490	4,484	21,293
2006	17,314	0.03	504	4,988	22,302
2007	17,833	0.02	346	5,334	23,168
2008	18,368	0.01	178	5,513	23,881
2009	18,919	0.01	184	5,696	24,616
2010	19,487	0.01	189	5,886	25,372
2011	20,071	0.00	0	5,886	25,957

[a] Includes a 3 percent growth rate independent of growth caused by the UTTC.

In the last two columns of Table 2, we see that the traditional migration between the traditional public schools and private schools ranges between 2,175 and 189 per year. This equates to a migration of approximately 1.5 percent of traditional public school students by the year 2011, a relatively small amount, producing a total private school enrollment of nearly 25,975 in 2011.

VI. Impact of the Universal Tax Credit on State and Local Finances

Before any bill can be passed by the Utah Legislature, a "fiscal note" must be attached to it. This fiscal note explains how much money would be required to implement the legislation. The fiscal note usually describes the one-year fiscal impact of the legislation, not the long-range fiscal impact, but both are important to consider. This section describes the short- and long-term fiscal impact of a Universal Tuition Tax Credit (UTTC) on the Utah state budget.

Previous Impact of Private Schooling

To understand the short- and long-range fiscal impact of the UTTC on Utah state budget revenues, it is first necessary to describe the historical impact of private schools on state revenues and expenses. There are over 13,500 Utah students currently enrolled in private schools.[1] The parents of these students pay for their education outside of the public school system. Therefore, each student enrolled in private school represents a tax savings for Utah taxpayers. If these students were to enroll in public schools, it would cost the state over $41 million in additional funds to pay for their education. The combined annual savings to the state and to counties is over $60 million. These savings are a windfall to the state achieved by a form of double taxation, where private school families pay full taxes for a service they are already buying elsewhere at full price.[2]

A similar situation would be a hypothetical group of ranchers who provide their own utilities (such as water and sewer) but who are still required to pay a full share of taxes to support government-provided water and sewer. The ranchers may have legitimate reasons for choosing not to use the public utilities, such as large connection fees or higher costs. By the same token, families with children may have legitimate reasons why the government-provided public schools do not meet their needs, such as concerns for student safety, dissatisfaction with the quality of education, or the lack of religious values in the schools. In both cases, these citizens are paying for the same services twice, once through private means and again through their taxes.

Each student enrolled in private school represents a tax savings for Utah taxpayers. If these students were to enroll in public schools, it would cost the state over $41 million in additional funds to pay for their education.

Immediate Impact of Tax Credits

Because the state has been receiving more than $41 million in state taxes for public schools from private school families, it would be a shock to the state budget to immediately relieve these families of even part of this taxation burden. How big of a

1 Fall 1998 enrollment includes 13,540 students in 107 of 121 regular private schools, not counting students in the 24-hour treatment center schools.

2 It currently costs state taxpayers an average of $3,093 to educate a student in the public school system. In addition, taxpayers pay an average of $1,382 per student in local property taxes for public schools. Thus, it would cost Utah taxpayers an additional $60 million to provide a publicly funded education to the 13,500 children currently in Utah private schools; private school families are saving Utah taxpayers $60 million per year, when state and local finances are included.

shock? An immediate tax credit of $2,401 per student for all 13,500 private school students would reduce state tax revenues by $32 million per year, which would undoubtedly be unacceptable to the legislature. Demand for private schooling would also probably exceed the current capacity of private schools, causing disappointment to many families and perhaps a short burst of overbuilding private schools.

A more orderly transition would occur by allowing a $1,000 tax credit for students who transfer to private schools from public schools. This would effectively lower the price of private schools by $1,000 for these families. As shown in the previous chapter, this would likely encourage about 1.2 percent of Utah public school students to transfer to private schools. Private schools already have enough spare capacity planned for fall 1999 to handle this increase in enrollment, and subsequent enrollment growth would be small enough to be easily accommodated.

The immediate savings to the state school budget would be $3,093 per transferring student. The state would still collect this amount but would no longer need to spend it to educate those students. The funds saved would then be available to cover the cost of the tax credits for existing private school students as well as transferring students. On the whole, the state budget for public education would be less because there would be fewer students in public schools. At the same time, the state would collect less state income taxes by an equivalent amount, resulting in zero net effect on the state budget. As additional students transfer to private schools each year after the UTTC is enacted, the increased school-budget savings would allow larger tax credits to existing private students and eventually to all private school students. This phase-in method would allow the UTTC legislation to have a zero fiscal note.

The tax credit amount will eventually reach 50 percent of the total public school cost per student. This is the maximum tax credit that will be available under the UTTC plan. Once the 50 percent level of tax credit is reached, any additional savings from students migrating from public to private schools would go to the state's Uniform School Fund or be used for an income tax reduction. Private school enrollment would have to grow to almost 13 percent of Utah students to reach this point.

Local property taxes would at first be unchanged, but this would bring an immediate public school enhancement, since there would be fewer students in the local public school district to educate but the same amount of property tax revenue. However, if the local authorities chose instead to spend the same amount per student (an average of $1,382), they could cut local taxes by the amounts shown as local property tax savings in chapter IV, Table 1.

For example, $7.7 million of property taxes would be saved in the year 2001. Over the course of five years, the UTTC would save $36 million in local property tax expenditures. After ten years, the amount saved would increase to $118.5 million, and after 20 years, it would reach $426.4 million.

The immediate savings to the state school budget would be $3,093 per transferring student. The state would still collect this amount but would no longer need to spend it to educate those students. The funds saved would then be available to cover the cost of the tax credits for existing private school students as well as transferring students.

Thus, the UTTC produces a "win-win" situation for both public schools and for parents. Public schools could have more money per student and parents could choose the school of their preference, either public or private, on a more equal financial basis.

Instead of returning it to local taxpayers, this money could be used by the local public school district to purchase needed equipment, lower class sizes, pay teachers more, or buy classroom materials. The more students that choose private schooling over the years, the larger these yearly savings would be and the greater the amount of tax revenues per student going to public schools. Thus, the UTTC produces a "win-win" situation for both public schools and for parents. Public schools could have more money per student and parents could choose the school of their preference, either public or private, on a more equal financial basis.

Long-range Financial Impact of Tax Credits

As explained above, the UTTC would have no immediate financial impact on state tax revenues but would allow for instant and growing enhancements for public school students through local property taxes. What would be the long-range financial impact of the UTTC? The answer depends to a large extent on how well private schools do in fulfilling the educational needs of families and how well public schools respond to the competition.

As projected in the previous chapter, it is reasonable to assume that the changes in public school enrollment patterns would be small, about a two percent loss to private schools in the first five years. As has been pointed out previously, many parents are satisfied with the public school that their child is attending and would be unlikely to withdraw their child from a school where that child is learning successfully. It is also reasonable to assume that public schools will respond favorably to the challenge of competition from private schools. Many will make serious improvements in their practices and policies, thus causing many parents to continue using public schools. Under this scenario, demand for private schooling would rise no more than the predictions in Table 1. With few students migrating from public to private schools, the tax credits amounts would grow slowly, as would the financial enhancements to local school districts arising out of the local property tax savings.

Suppose, on the other hand, that public schools do not respond favorably to the increased challenge of competition from private schools. Realistically speaking, public schools have a history of slow improvements, and their entanglement in federal and state regulations create impediments to positive change in many cases. Under this scenario, the demand for private schooling would be higher than under the predictions in Table 1. The tax credits would reach higher levels within a few years instead of 10 or 20 years. Higher tax credits would mean still lower effective prices for private schooling, which would also add to demand and further accelerate the tax-credit schedule.

How fast the demand for private schooling will grow cannot be predicted, but it will depend heavily on how public schools respond to the challenge of school choice and enhanced competition. Still, no matter how fast demand grows, state taxes will continue to be unaffected until the tax credit reaches the maximum of $2,401, owing to

the balance between a lower state school budget and lowered tax collections caused by the tax credits. Local property taxes for education will immediately receive increasing savings, which may either be used to better fund public education or may be used to cut property taxes. Under either a slow growth or fast growth scenario, all Utah students will benefit directly, and the program will be a success in two ways: better education for those who need the private school option; and (likely) improved education for the vast majority still in public education. This is a win-win scenario for both public and private schools.

Under either a slow growth or fast growth scenario, all Utah students will benefit directly, and the program will be a success in two ways: better education for those who need the private school option; and (likely) improved education for the vast majority still in public education.

Appendix I. Questions and Answers About the UTTC

Q. What advantages does the UTTC have over a publicly funded voucher to attend a private school?

A. A UTTC leaves parents in control and lessens the opportunity for state control over private schools because parents choose the school and pay the tuition before they claim the credit. The authorization also falls under the tax codes rather than the education codes where it could get entangled with administrative rule making. The disadvantage is that parents would not get money for tuition until several months after they paid it. Special loan arrangements might be required for some parents.

Q. Are tuition tax credits for parents sending their children to parochial schools constitutional? Doesn't that amount to publicly funded religion?

A. The U.S. Supreme Court has differentiated between the purpose behind the aid and the manner in which the public assistance is provided. In other words, independent private choice ensures that the aid goes directly to the parent and not the school. Hence, it does not "establish" religion. In addition, recent court cases have affirmed the constitutionality of both vouchers and tax credits used at parochial schools.

Q. Do private schools outperform public schools?

A. While quality varies as much in private schools as public schools, the composite findings suggest that private schools on average outperform public schools when all other factors are held constant. Quality seems to correlate with the degree of competition.

Q. Will taxes have to be raised to offset the tax credits granted for private schooling?

A. It is true that tax revenues will go down due to tax credits. However, total spending for public education will go down even more. Hence, tax credits for private schooling will result in tax savings, and there will be no need for any tax increases.

Q. How does the UTTC help low-income parents who pay no taxes?

A. The UTTC allows other taxpayers besides parents to contribute to the educational expenses of a child and claim the tax credit against their state income tax, thereby allowing relatives, friends, businesses, or charitable non-profit organizations to contribute toward the tuition of students from low-income families. This form of tax credit has had good results in Arizona.

Q. Are low-income parents as interested in school choice as affluent parents?

A. Probably more so. The Heritage Foundation recently reported that private foundations have spent $61 million to provide private school vouchers to thousands of lower-income families in 39 cities. The interest has been so overwhelming that lotteries have had to be used even when parents have to scrape up part of the

tuition. The Children's Scholarship Fund, established by investment banker Ted Forstmann and Wal-Mart heir John Walton, recently held a lottery to allocate 40,000 scholarships to low-income families to attend the K-7 school of their choice. Over 1.2 million applications were received from every state in the country. Parents knew ahead of time that they would have to pay an additional $1,000 for tuition each year. The applications represented a $5 billion dollar commitment by parents whose income averaged less than $22,000.

Q. What percent of Utah parents would take advantage of a tax credit by sending their children to a private school?

A. In 1997, 61 percent of Utah voters favored giving parents a publicly funded private school option. A smaller number (54 percent) said that they would consider exercising that option for their own children. How many would do so would depend upon the size of the tax credit—the higher the credit, the higher the number of interested parents. We calculate that as many as one to two percent of public school students would transfer to private schools in the first year if the UTTC were enacted.

Q. Could private schools in Utah absorb a large number of new students transferring from public schools?

A. The Sutherland Institute asked that question of existing private schools (the results of the private school survey are shown in chapter V of this report). It appears that existing capacity could handle the expected number of transfers in the first few years, after which the number of students transferring would be less and should be easily accommodated by expansion or new schools. There is no way of determining the number of new private schools that would begin operation if a tax credit were available to parents, and the size of the tax credit will be the key determinant in attracting new providers.

Q. How do existing private schools feel about tuition tax credits?

A. Private school reactions to the idea of a tax credit are mixed: a few are afraid of increased competition; those private schools that have a religious base fear state control. Any legislation related to school choice runs the risk of increasing state control of private schools. However, control is more an issue for vouchers dispersed by the state than for tax credits where parents use their own money for tuition and then deduct that amount from their state income tax. Private schools are generally supportive of tax credits if they come without the threat of onerous regulations.

Q. How will tax credits help rural students where student densities may not attract private schools?

A. Tax credits will certainly not be disadvantageous to parents in rural areas. If private schools are not initially attracted to their areas, their education systems will function as before. However, the statewide and regional improvements that competition brings will spill over into their schools. What's more, entrepreneurs may

introduce new delivery models for education in rural areas using communication technology. And there is nothing to prevent public-private school partnerships for part of a child's education. Part-time specialty schools could prove profitable and beneficial in rural areas.

Q. Will the tax credit cover the total cost of tuition?

A. Not in most cases. Almost all private schools charge more for tuition and books than the maximum tax credit will cover ($2,401, or 50 percent of public school costs). The initial tax credit of $1,000 is only about 40 percent of the tuition at most parochial schools and a smaller fraction of the tuition at other private schools.

Q. Will related expenses such as books and transportation be covered by the tuition tax credit?

A. Generally all direct expenses paid through the school would be covered, but it depends upon how the state legislature structures the law.

Q. If the UTTC is approved, can the money be targeted to a specific student?

A. Yes, because tax credits are different than tax deductions. The spending is not in the same category as charitable giving where earmarking is not allowed.

Q. Would parents who currently send their students to private schools be eligible for the tax credit?

A. Yes, but the tax credit would be smaller for the first few years than for students transferring to a private school from a public school. To be revenue-neutral, the savings from transfers out of public schools must offset the expense of granting a tax credit for those currently enrolled in private schools. Therefore, it depends upon the value of the tax credit and how many students transfer.

Q. Will tax credits for tuition to private schools take money away from the public schools?

A. Not if handled responsibly by the legislature. Public schools could actually have more money per student to work with. This is because the tax credit is less than what is currently spent to educate that same student in a public school. The difference represents a savings to taxpayers, part of which could go to enhance public schools.

Q. Should tuition tax credits be considered a threat to public schools?

A. No. Healthy competition has a motivational advantage. Public school officials have never had to compete with private schools, so expanded choice in education may be unsettling to some of them. However, tuition tax credits will not create a mass exodus from public schools. The motivation for most parents will be finding the school that best meets the needs of their students. Many parents will still find the local public school to be a good match for their child.

Q. What effect will tax credits have on the public schools?

A. This has been hotly debated by both proponents and opponents of school choice. New studies are starting to clear the air. So far they show that competition with private schools raises public school teacher salaries, increases achievement for public school students, increases rates of college enrollment and reallocates public school budgets toward instruction (nationally, private schools spend 46 percent of their budgets on teacher salaries compared to 33 percent in public schools).[1]

Q. What can private schools offer to public schools?

A. Public schools and teachers can benefit from cooperative efforts with private schools. The Houston School district, in order to solve overcrowding, provided some of their students vouchers to attend private schools. Some private schools specialize in hard-to-educate student populations. Public schools often contract out for services from private providers. Similarly, many public school districts do not have the expertise to offer specialized curriculum or teaching options to parents. The flexibility and freedom found in private schools can test new ideas and practices before implementation in public schools. Teacher exchange programs can provide free training and teacher renewal—teacher burnout is a major problem in public schools. Many public schools would welcome these types of help.

Q. Could school choice result in segregation or elitism?

A. Geographically based school boundaries currently create a de facto form of segregation and elitism. Federal laws already prevent historic forms of segregation, and an adequate tuition tax credit amount would go a long way to overcome both segregation and elitism. That is not true, however, if the tax credit amount is so low that many parents cannot benefit from it.

Q. What effect will tuition tax credits have on teachers and teaching?

A. It should help both for the most part. Teachers and teaching are undervalued in our society, which is why education doesn't tend to attract the best university students. If education improves, the demand and appreciation for good teachers will improve, teachers salaries will increse, and increased competition will weed out the less competent teachers. While average salaries for private school teachers are currently lower than salaries of public school teachers, job satisfaction is over three times higher according to an U.S. Department of Education report. Due to their free and flexible workplace, the collegial atmosphere and the degree of parental involvement, relatively few private school teachers reported that they would move to a public school system—even for a much higher salary.[2]

1 Paul F. Steidler, "Teacher Shortage? Try Market Incentives," *Investor's Business Daily*, Feb. 12, 1998.

2 See Matthew J. Brouillette, "Teachers and School Choice," *Viewpoint on Public Policy Issues, Mackinac Center for Public Policy*, Aug 5, 1998 and William Styring, "Teachers and Schools Choice: School Choice Would Benefit Both Students and Teachers," *American Outlook*, Spring 1998, 49-51.

Q. Why do many educators criticize school choice?

A. There are several reasons: job protection is one; concern about competition is another; a third is that centralized government is built around the concept that "we know best." Many people in the educational establishment do not believe that parents are capable of making important educational decisions. That attitude demeans parents and reflects ignorance of how markets operate. Word of mouth, consumer reports, advertisements, and other means provide consumers with the tools to make informed decisions. Parents do not have to be educational experts to choose a good school for their children.

Perhaps the factor that most accounts for public education's opposition to school choice is that school choice is a subtle form of criticism, a way of saying that the current system isn't good enough. Instead of reacting to school choice efforts as criticism, educators should examine and embrace solutions that provide the best education to all students.

Q. What protections for children are in place for private schools?

A. State and federal laws protect against mistreatment, discrimination, and civil rights violations. There are also laws protecting the health and safety of children in private schools. Educational progress or the lack thereof must be monitored by parents just as it should be in public schools. Private schools have a greater incentive to make that information known to parents.

Q. Will private schools have to enroll any student who applies?

A. No. If they did, some schools would be swamped beyond their capacity. Such a mandate discourages finding a good match between school and child.

Q. Will some private schools turn into diploma mills as they have in higher education, where meaningless "diplomas" are easily obtained?

A. Only if parents create a market for that. In higher education, a few students have created that market, but it should not happen under parental tutelage. Because credentials from such schools are not as valuable as credentials from reputable educational institutions, it is unlikely that such a market will form.

Q. What advice should be given to parents considering enrolling their child in a private school?

A. Examine the credentials and track record of any school under consideration. Find a good fit for your child by examining the goals, guiding values, and operating principles of the school. Ask a lot of questions. Find out how individual educational progress will be measured. Also, make sure the climate includes the ingredients of change and improvement. Make sure the school is registered with the proper authorities and that the facilities meet fire and safety codes.

Q. Most private schools are smaller than public schools. What will my child lose if she transfers from a public to a private school?

A. Very little, if a careful selection is made. National surveys indicate that most parents would like their children to attend a smaller school—they feel the children get lost in larger ones. Many private schools have fitness or life-long activity sports programs rather than competitive team sports. Like magnet schools, many private schools specialize in target curricula such as arts, science, or communication. Parents can use interest assessments and other means to determine where their child's potential lies and pick a school accordingly, public or private.

Q. What would keep home school parents from starting small private schools to take advantage of a tuition tax credit?

A. It is unlikely that parents would be eligible for a tax credit for money paid to themselves.

Q. Would a free-market environment be a utopia for education?

A. The free market is not perfect. When conflicting motives and needs are present, no system can provide a utopia, as evidenced by the current public school system. However, the free market reduces conflict by allowing individual needs to be met. A condition of full school choice will better meet the needs of more students and thereby reduce the conflict.

Q. How will a tuition tax credit affect local tax revenues?

A. A tuition tax credit directly affects only state revenues coming from the state income tax. However, if there are fewer students to educate in the public schools, there will less need for locally assessed property taxes to build, maintain, and operate public schools. Thus tuition tax credits provide the opportunity to reduce both state and local taxes.

Appendix II. History, Trends, and Attitudes Toward School Choice

What is the History of School Choice?

Major publicly funded voucher programs for students otherwise eligible to attend public schools first appeared through legislative proposals in the 1960s and 70s. Prior to that, several school districts provided selected assistance to parents of private school children. As early as 1947, the courts ruled that a district could reimburse parents of children in religious schools for public transportation costs. Since then, the legitimacy of loaning public school textbooks to students attending private schools and state income tax breaks for expenses at religious schools have also been upheld.

The courts have also ruled in favor of direct grants to religious colleges for secular purposes. For example, in Wisconsin, public funds have been used to allow high school graduates to attend private colleges, including religiously affiliated schools.

Tax credits have a similar history to vouchers. In K-12 schools Minnesota has allowed a small tax credit to low-income parents for private education since 1955. In 1997 the tax credits were raised to $1,625 for grades K-6 and $2,500 for grades 7-12. A tax-credit refund feature of $1,000 ($2,000 per family) accompanied the increase for families earning less than $33,500 annually. The tax credits can be used for textbooks, transportation, tutoring, computers, software, and even learning camps.

The majority of private schools in Minnesota are religious in nature. Spurred on by public school educators, several court challenges have been issued over the years to Minnesota's law. In 1983, the United States Supreme Court validated the Minnesota courts' determination that the tax credit goes to the parent and not the religious school. In the Court's estimation, the tax credit does not aid the establishment of religion.

Publicly funded school choice for parents arrived on the scene in a big way during the 1990s. In 1990 the Wisconsin legislature, with the support of Governor Tommy Thompson, made the Milwaukee Public School system the first district in the country with a publicly financed, K-12 school choice option. The need was driven by poorly performing public schools that lacked the ability to improve themselves. Since the performance of inner-city minorities was particularly dismal, the focus initially centered upon them.

In 1995 Ohio authorized a program in Cleveland similar to that in Milwaukee. Cleveland provides $2,250 for up to 4,000 children. Wisconsin is now providing vouchers averaging $4,900 for up to 15,000 low-income children. Other places have followed suit, including New York City, Washington, D.C., San Antonio, Indianapolis, and Dayton, Ohio, among others. Some of these options have been funded with private money.

Reasoning that no parent should be forced to send his or her child to a poorly performing school, a plethora of private donors have come forward to provide over $61 million dollars for private school tuition scholarships. They have provided over 13,000 private scholarships in 39 cities. The scholarships range from $500 to full tuition. Over $50 million has been pledged in the San Antonio area over the next ten years.

Ted Forstmann, an investment banker, and John Walton, a Wal-Mart heir, have pledged $100 million for school choice scholarships and are challenging local partners to match their contributions. By early December of 1998 they had received $75 million in matching contributions for partnerships in 37 cities. Forstmann states that the cause of our educational problems isn't money, class size, standards, parents, or teachers. He says it's a "serious lack of competition."[1]

Private scholarships don't even begin to meet the parental demand. Lotteries have had to be established to ensure fairness. In several cities, upwards of 40 percent of eligible low-income parents entered the lottery for the Children's Scholarship Fund even though they would have to come up with $1,000 of the tuition if their students were chosen.

The movement for publicly funded school choice has moved beyond the inner city. Eighteen states now provide public school choice subject to space limitations. Eleven other states permit it. Thirty-seven states have enacted laws in favor of charter schools to one degree or another.[2] This newfound interest in school choice within public education is obviously connected with the growing interest in private school options.

The movement for quality school options has not gone unnoticed by parents where school choice is not available, and they are taking alternative action. Parents in Denver, sensing a way out of the poor-education dilemma, have filed a class-action lawsuit charging the Denver Public Schools with failure to adequately teach their children. Similar action is under consideration in other school districts. A large body of improvement research that the schools have failed to implement is bolstering these lawsuits.

Tuition voucher bills have been submitted in the legislatures of many states over the past few years, though legal scare tactics have curtailed the passage of many of them. However, the courts have now more clearly indicated their position and the momentum is accelerating. Florida, for example, recently passed the first statewide voucher bill for students in poorly performing public schools. The trend toward tax credits has also picked up steam. This is because tuition tax credit options avoid many of the legal challenges and obstacles connected to voucher options.

The concept of tax breaks to parents of students attending private schools is well established in higher education. Current federal tax laws provide tax credits for

Tuition voucher bills have been submitted in the legislatures of many states over the past few years, though legal scare tactics have curtailed the passage of many of them. However, the courts have now more clearly indicated their position and the momentum is accelerating.

1 Adam Meyerson, "A Model of Cultural Leadership: The Achievements of Privately Funded Vouchers," *Policy Review*, Jan/Feb 1999, p.24.

2 Nina Shokraii Rees and Sarah E. Youssef, *School Choice: What's Happening in the States 1999*, Heritage Foundation, Washington, D.C., 1999.

The concept of tax breaks to parents of students attending private schools is well established in higher education.

money invested in behalf of a child for a future college education. Education IRAs are also allowed for families earning less than $100,000 dollars a year. These tax credits do not restrict attendance to public institutions. Tax-deferred college savings plans are also offered in most states. Wealthy donors can make unlimited tax-free gifts to the plans for children and grandchildren and gain a huge estate-tax break. Similarly, grandparents can pay tuition directly to a school, free of gift tax. At the federal level the support for tuition tax credits for K-12 education is growing.

There are currently no federal tax breaks for parents sending children to private elementary and secondary schools. However, the issue of equity and fairness for elementary and secondary students has been raised and is expected to be debated in Congress in the near future. Congressman Ron Paul of Texas plans to introduce the Family Education Freedom Act, which would give parents a $3,000 per child tax credit for educational expenses incurred for public, private, or parochial schools.

Why does the federal government grant tax credits for college students and not for elementary and secondary students? Up until now the issue has been unfilled needs in the job market and economic access to college, not access to quality education. Less than 20 percent of jobs require little or no job training and costs for higher education have escalated at almost double the rate of inflation.

The technical nature of the job market and the lack of skilled workers have raised serious questions about the economic future of our country. Better education at all levels is seen as the solution, and especially so among minorities and the disadvantaged who will make up a growing share of new workers.

The movement for tax credits at the state level began, as did vouchers, in urban centers with low-income families. Arizona and Iowa, as well as Minnesota, provide tuition tax credits statewide.[3] Political leaders in several other states are advocating tax credits. It is under consideration by state legislatures in several states including California and Georgia.

What is the Effect of School Choice on Academic Achievement?

Beginning in the late 1980s, a number of publicly and privately funded school choice pilot programs began providing researchers with opportunities to study the effect of school choice on academic achievement. Educational outcome information is currently available from programs in San Antonio, Indianapolis, Milwaukee, and Cleveland. More information will become available in the next few years as more school choice programs get underway in many other states and cities, including Arizona, Florida, New York City, and Washington, D.C.

Although there are technical problems with evaluating the results of school choice programs in some of these locations due to the first-come, first-admitted admission

3 Richard Burr, "K-12 Tuition Tax Credit: Choice Plan Takes a Surprise Twist," *The Detroit News*, March 1, 1998.

procedures used in most programs, the test score results are mainly positive. For example, the scores of students participating in the school choice program in San Antonio increased between 1991-92 and 1993-94, while those of the public-school comparison group fell. In Indianapolis, students in private schools did better than students in public schools, particularly in grades 6-8.[4]

Other studies, all by credible researchers, show the following:

- Princeton University economist Cecilia Rouse, in a study published in Harvard's *Quarterly Journal of Economics*, finds "quite large" gains in math achievement for Milwaukee choice students.[5]

- Jay Greene, Paul Peterson, and Jiangtao Du find gains for Milwaukee choice students in math and reading scores. Greene and Peterson are political scientists at the University of Texas and Harvard University, respectively. Du is a Harvard statistician.[6]

- John Witte, the Milwaukee program's original state evaluator, reports several positive aspects of the Milwaukee program. However, he contends that it has not produced measurable gains in academic achievement. Witte is a political scientist at the University of Wisconsin.[7]

In addition to the above, parents overwhelmingly rate school-choice programs as a success. So do several charitable foundations that have backed their belief by providing tuition scholarships for low-income parents to send their children to a private school of choice.

Parents overwhelmingly rate school-choice programs as a success. So do several charitable foundations that have backed their belief by providing tuition scholarships for low-income parents to send their children to a private school of choice.

The Milwaukee school choice program, since it was the first site for open school choice, has received the most study. Opponents of school choice tend to discount or criticize the Milwaukee data as suggesting no improvement. In a more neutral vein, Howard Fuller, the superintendent of the Milwaukee Public Schools at the time the program began, recently claimed his current analysis of the evidence supports a positive outcome.[8] In addition, two independent teams have analyzed Witte's test score data. Neither team could validate Witte's finding of no gain in reading and math

4 Paul E. Peterson, "Vouchers and Test Scores: What the Numbers Show," *Policy Review*, Jan/Feb 1999, 10-15.

5 Cecilia Rouse, "Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program," *The Quarterly Journal of Economics*. Vol. 113, No. 2, 1998.

6 Green, Peterson, and Du, *Effectiveness of School Choice: The Milwaukee Experiment*, Harvard University Education Program on Education Policy and Governance, Occasional Paper 91-1, March 1997.

7 John F. Witte, *Achievement Effects of the Milwaukee Voucher Program*. Paper presented at the 1997 American Economics Association Annual Meeting, New Orleans, January 4-6, 1997.

8 Howard L. Fuller, "The Real Evidence: An Honest Research Update on School Choice Experiments," *Wisconsin Interest*, Fall/Winter 1997, pp. 17-32.

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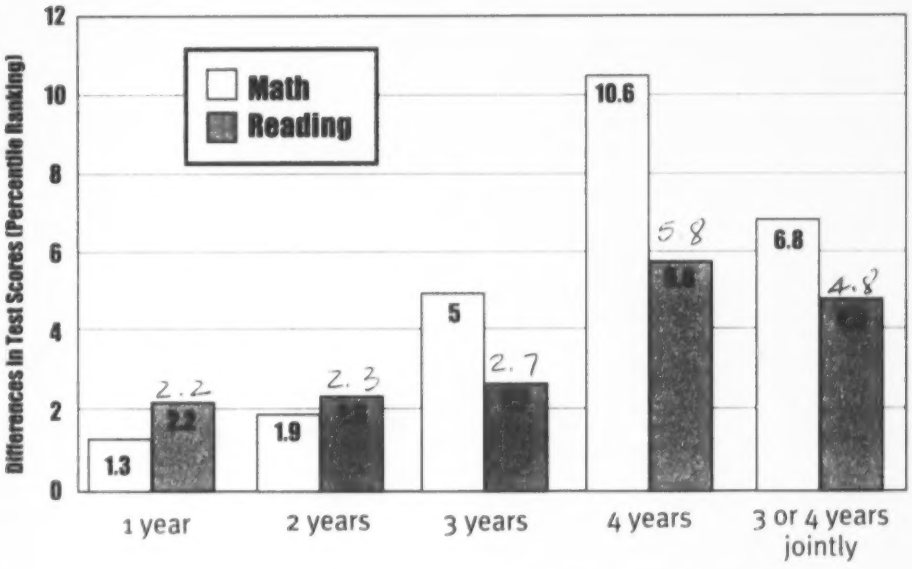
scores. Using a variety of measures, both identified substantive, statistically significant gains in math scores for choice students.[9]

Figure 1. Student Achievement in the Milwaukee School Choice Program



Students in Milwaukee's school choice program participated in a randomized field test from 1990-1995. Differences in math and reading scores between choice and public school students increased each year.

Source: Paul E. Peterson and Bryan C. Hassel, eds., *Learning from School Choice*, Brookings, 1998.

Parents' Attitudes Toward School Choice

Public pressure is mounting for school improvement. Both the state and federal legislatures are now concerned over the fact that public education in general has not been able to achieve gains in student performance. The achievement of students in other industrialized nations continues to outpace U.S. students. Private sector competition is seen as a partial answer. More than 30 national organizations support market-based school reform.[10] Twenty-eight states have organizations pushing for publicly supported open school choice programs.

Parents agree. The percentage favoring publicly funded private education options has almost doubled during the last five years. This has resulted in a groundswell of federal interest and state initiatives in support of tuition vouchers or tax credits. The topic of school choice is flourishing.

9 See Greene, Peterson, and Du, *Effectiveness of School Choice: The Milwaukee Experiment*, Harvard University Education Program on Education Policy and Governance, Occasional paper 97-1, March 1997. Also see Cecilia Rouse, "Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program," *The Quarterly Journal of Economics*, Vol. 113, No. 2, 1998.

10 See Appendix IV of this report for a list of many of these organizations around the U.S.

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Appendix II. History, Trends, and Attitudes Toward School Choice

As public understanding of school choice increases, so does the percentage of adults who support open school choice. Phi Delta Kappa (a professional association of educators) conducts an annual public poll on educational issues. In 1993, they decided that the issue of school choice had received enough attention to be included in that year's poll. For the past five years they have continued to include questions regarding school choice in their annual survey. Their baseline question was: "Do you favor or oppose allowing students and parents to choose a private school to attend at public expense?" The 1993 response in favor was 24 percent. By 1998, 44 percent were in favor.

As with any poll, the results vary by how the question is asked. Questions that better explained school choice garnered 51 and 52 percent in favor, respectfully. That represented an 8 percent increase from two years earlier. Younger people favor school choice more than people over age 50 do. Among non-whites, where the issue has received more attention, 68 percent are in favor. The data suggest that once the idea receives adequate attention, a sizeable majority of Americans are in favor of school choice.

Specific questions pertaining to tuition tax credits were asked for the first time in the 1998 survey. Tax credits are more appealing than vouchers. Fifty-six percent of the general puolic and 63 percent of public school parents favor the idea. Again, depending upon how the question is asked, the percent in favor rises to 66 percent in the general population and 73 percent among public school parents.

A more telling figure is the proportion of public school parents who would send their child to a different school if they had the option. Forty-six percent said they would. Only 6 percent said they would send their child to another public school. The rest said a private (22 percent) or church-related (17 percent) school.[11]

Polling data from Utah confirm the high interest in parental school choice. An R.T. Nielson poll of 300 Utah voters found 79 percent in favor of providing parents with the option of sending their children to the public, private, or parochial school of their choice. Sixty-one percent favored the use of tax dollars to provide scholarships to the school of choice. It is significant that 54 percent said they would consider sending their children to a private school if the option were open to them. The R.T. Nielson poll did not differentiate between the voucher and tax-credit funding options.

Both the national and the local polling data suggest that a growing majority is supportive of the idea of publicly supported school choice, including the tax-credit option of implementation. Publicly supported school choice appears to be an idea whose time has come.

Both the national and the local polling data suggest that a growing majority is supportive of the idea of publicly supported school choice, including the tax-credit option of implementing it. Publicly supported school choice appears to be an idea whose time has come.

11 See Lowell C. Rose and Alec M. Gallup, "The 30th Annual Phi Delta Kappa/Gallup Poll of Public's Attitudes Toward the Public Schools," *Phi Delta Kappan*, September 1998, p 44. Also see Quentin L. Quade, *Properly Put Polls Persistently P[illegible]-Parent*, The Blum Center for Parental Freedom in Education, Marquette University, Milwaukee, 1996.

Appendix III. Common Misconceptions About School Choice

Given the long and established history of government-operated public education, it is not surprising that the concept of expanded educational choice is threatening to some. Those opposed to school choice for parents have fostered a number of misconceptions about school choice and what it would do. The following section addresses some misconceptions about school choice.

Vouchers or tax credits for current private school students in Utah would take millions of dollars away from public schools.

The state's willingness to provide free education is based upon the social benefit of an educated populace. It should not matter who does the educating as long as it is successful. Opponents of school choice fail to mention the related tax savings that would arise from new students transferring from public tax-supported schools to private schools. Under some proposals, the cost to the public school system would be zero because the savings arising from more students transferring to private schools would be used to pay for the tax credit or voucher.

Private schools are elitist because they can refuse students. If most parents chose private schools, it would leave only the difficult and the high-cost-to-educate students. This would also be elitist.

School choice is exactly the opposite of elitist, which is probably why it is supported by so many people in low-income and minority groups. Publicly funded school choice would actually eliminate much of the socioeconomic elitism that now exists because the choice of excellent education would be available to all. As to concerns that school choice would allow private schools to "skim" the best students, even a 10 percent movement of students from public schools to private schools, as outlined in this report, would not significantly affect the student mix in public schools. In addition, districts get extra money for students who are difficult to educate. If some of that money were available to private schools that took on such students, it would encourage the schools to enroll them.

Since so many private schools are sponsored by churches they should not be getting tax dollars. That violates the U.S. Constitution.

Tax credits are given to parents, not schools. As long as the choice of the schools is determined by the parent, and the credit is used for education, not for religious purposes, tax credits and vouchers are constitutional. The courts have already addressed this issue and upheld the legality of school choice. (See Chapter III of this report for more on this issue.)

Kids are not widgets: they shouldn't be subject to every new cost-cutting procedure that accompanies competition. They shouldn't be pawns in a game of competition.

The public schools use a factory model in which only one method of delivery is used and students who don't fit that mold are out of luck. This system fails many students year after year. Competition would offer a number of alternative choices to these students. Any failure from selecting the wrong private school can be corrected quickly by parents. Private schools offer parents the continual opportunity to find a better match for their students. Tuition considerations form only a small part of that decision. Better education and the freedom to find it is the issue.

Operating and infrastructure costs often remain the same when students depart for private school. For example, the same numbers of teachers have to be paid. That increases the cost per student for those left behind. Tax credits impose an extra burden on public schools.

Schools face the same problem when enrollment declines for other reasons. All districts currently adjust operating costs when significant enrollment changes occur. In addition, local property tax revenues remain constant and can help offset any needs.

Private schools do not have to maintain the same standards established for public schools. Children should not lose the protection those standards provide.

Current public school regulations do not guard against child failure, only child abuse. Numerous studies have shown that up to one-fourth of public school students are not succeeding at minimal levels. Those students are stuck in failure year after year. Only public school monopolies can get away with continual failure. Private schools have to succeed to stay alive. As for concerns about child abuse or safety, private schools most often have higher standards in these areas than public schools do because this is one of the factors that attracts parents to them.

The frequent changes that accompany the free-market system would disrupt and destabilize schools and kids. Disruptions can do irreparable harm.

Disruptions to public schools and existing private schools would be relatively minor. Many parents are satisfied with the schools that their children currently attend and will not be inclined to move their children from a school where they have found success. Private schools are able to respond to market demand relatively rapidly without a great deal of disruption.

Appendix IV. Organizations that Support Market-Based School Reform

National Organizations that Support Market-Based School Reform

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